

The Second PART of the  
**R E P O R T S**  
 O F  
**EDWARD COKE,**  
 Her Majesty's ATTORNEY-GENERAL,  
 O F

Divers Matters in Law, with great and mature  
 Consideration resolv'd and adjudg'd, which were  
 never resolv'd or adjudg'd before; and the Reasons  
 and Causes thereof; during the Reign of the most  
 Illustrious and Renowned Queen **ELIZABETH**,  
 the Fountain of all JUSTICE, and the LIFE  
 of the LAW.

With REFERENCES to all the BOOKS of the  
**COMMON LAW**, as well Ancient as Modern.

*Scito quod non mihi soli laboravi, sed omnibus exquirentibus scientiam.*

**ECCLESIASTICUS, CAP. 24.**

*Lex est commune preceptum, virorum prudentium consultum, delictorum qua sponte vel ignorantia contrahuntur, communis rei publice spatio.*

**PAPIAN, LIB. 1. Definis.**

*Lex dicitur a ligando, quia obligat; vel dicitur a legendo, quia publicis legatur.*

**ISTODORUS.**

*Lex dico legem, a me dici nihil aliud intelligi volo quam imperium; sine quo domus ulla, nec civitas, nec gens, nec hominum universum genus stare, nec rerum natura omnis, nec ipse mundus potest.*

**CIC. LIB. 1. de Legibus.**

In the **SAVOR**:

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M.DCC.XXVII.



REPORT

OF THE

COMMISSIONERS

OF THE

LANDS

AND

WATERS

OF THE

STATE

OF

NEW

YORK

IN

THE

YEAR

1860

AND

FOR

THE

YEAR

1861

TO THE

Learned READER.

**Q**UÆ tria Euripides civis pariter atque viri boni officia facit, Deos colere, & qui te genuerunt parentes, ῥόμος τε κοινὸς Ἑλλὰδος legesque inquit communes Greciæ; ea quo commendando tibi, (humanissime Lector) ut secundum pietatem ac religionem in Deum, & unctam ejus serenissimam tuam Principem, addo etiam & honorem parentibus debitum, proxime leges Angliæ communes justo obsequio studioque prosequar: Nam ex omnibus legibus (humanis dico) &

**T**HERE are (saith Honour God Euripides) three and thy Parents observe the Common Vertues worthy our Meditation: To Law.

honour God, our Parents who begat us, ῥόμος τε κοινὸς Ἑλλὰδος and these Common Laws of Greece; the like do I say to thee (Gentle Reader) next to thy Duty and Piety to God, and his Anointed, thy Gracious Sovereign, and thy Honour to thy Parents, yield due Reverence and Obedience to the Common Laws of England: For of all Laws (I speak of human) these are most equal and most certain, of greatest Antiquity, and

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and least Delay, and most beneficial and easy to be observed; as, if the Model of a Preface would permit, I could defend against any Man that is not malicious without Understanding, and make manifest to any of Judgment and Indifferency, by Proofs pregnant and demonstrative, and by Records and Testimonies luculent and irrefragable: Sed sunt quidam fastidiosi, qui nescio quo malo affectu oderunt Artes antequam pervenerunt. *There is no Jewel in the World comparable to Learning; no Learning so excellent both for Prince and Subject, as Knowledge of Laws; and no Knowledge of any Laws (I speak of human) so necessary for all Estates, and for all Causes, concerning Goods, Lands, or Life, as the common Laws of England. If the Beauty of other Countries be faded and wasted with bloody Wars, thank God for the admirable Peace, wherein this Realm hath long flourished under the due Administration of these Laws: If thou readest of the Tyranny of other Nations, wherein powerful Will and Pleasure stands for Law and Reason, and*

*æquissimæ illæ sunt certissimæque, & integritatis maximæ, minimæque moræ, utilissimæ deniquæ facillimæque observatu. Atque hoc, (siquidem præfatiunculæ istius pateretur modulus) puto me, nisi si quis malitiose nolit intelligere, adversus quempiam tueri posse, idque ostendere gravissimis ac demonstrativis argumentis, monumentis etiam & testimoniis clarissimis firmissimisque, cuicumque æquo estimatori incorrupti candidique judicii: Sed sunt quidam fastidiosi, qui nescio quo malo affectu oderunt artes, antequam pervenerunt. Nulla est usquam gentium margarita doctrinæ æquiparabilis; nulla doctrina, principi simul ac populo legum scientia præstantior; nullæ Leges (humanas intelligo) ita cognitu necessariæ omni hominum conditioni, ad omnes causas & judicia, de fortunis, possessionibus, vita denique ipsa atque communes Angliæ. Quod si cæterarum fere nationum splendorem ac pulchritudinem, atque fœdavit aut extinxit cruentum bellum, immortales Deo gratias age, pro admirabili pace, in qua regnum hoc sub istarum legum*



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legum iusta adminiftratione diutiffime floruit: Sin quid unquam de exterrarum gentium tyrannide legeris, in qua stat pro ratione voluntas prapotentis, libido pro lege, ubi offensa leves (forte etiam proprie estimationis errore susceptæ) venificio aut cæde, indicta causa, subito vindicant lauda Deum pro iustit' almæ tuæ Principis, quæ his ipsis legib' (ad totius mundi admirationem) populum suum dei benignitate in pace & prosperitate regit; neq; vel gravissime delinquentem punit quempiam, etiamsi læsæ Majestatis capitale crimen admiserit, nisi secundum justam & æquam in hac lege actionem.

Quod si in aliis regnis obtinere quidem videntur leges, eas tamen malint Judices ad injustitiam detorquere, quam ut offensum habeant dominum Regem, unde Poetæ illud, *Ad libitum Regis sonuit sententia legis*; benedicas (Lector) Deo pro Elizabetha nostra, quæ secundum antiquum regni ipsius canonem, illud imprimis legum interpretibus & justitiæ ministris suis omnibus in mandatis dare solet, ne intervenientibus quibuscunq; rescriptis, epistolis, mandatis

where, upon Conceit of Mislake, Men are suddenly poisoned, or otherwise murder'd, and never called to answer; praise God for the Justice of thy gracious Sovereign, who (to the World's Admiration) governeth her People by God's Goodness, in Peace and Prosperity by these Laws, and punisheth not the greatest Offender, no, though his Offence be Crimen læsæ Majestatis, Treason against her Sacred Person, but by the just and equal Proceedings of Law.

If in other Kingdoms, the Laws seem to govern, but the Judges had rather misconstrue Law, and do Injustice, than displease the King's Humour, whereof the Poet speaketh, *Ad libitum Regis sonuit sententia legis*; bless God for Queen Elizabeth, whose continual Charge to her Justices, agreeable with her ancient Laws, is, that for no Commandment under the Great or Privy Seal, Writs or Letters, common Right be disturbed or delayed. And if any such Commandment (upon untrue Surmises)

2 E. 3. cap. 8.

20 E. 3. c. 1.

20 E. 3. c. 2.

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Magna Carta  
cap. 29.

*Surmises* ). should come, that the Justices of her Laws should not therefore cease to do Right in any Point : And this agreeth with the ancient Law of England, declared by the great Charter, and spoken in the Person of the King, Nulli vendemus, nulli negabimus, aut differemus Justitiam vel Rectum.

If the ancient Laws of this noble Island had not excelled all others, it could not be but some of the several Conquerors and Governors thereof, that is to say, the Romans, Saxons, Danes, or Normans, and specially the Romans, who (as they justly may) do boast of their Civil Laws, would (as every of them might) have altered or changed the same.

For thy Comfort and Encouragement, cast thine Eye upon the Sages of the Law, that have been before thee, and never shalt thou find any that hath excelled in the Knowledge of these Laws, but hath suck'd from the Breasts of that Divine

etiam sub sigillo five communi, five privato suo, aut impediatur publicum jus, aut vel tantillum differatur. Quod si forte aliquod mandatum fictis nixum causis aliquando intercedat, ne propterea judices a debita justitiæ administratione cessent aut retardentur : Atque hoc facit ex antiquo instituto Angliæ, in *Magna* (ut loquuntur) *Charta* posito, quæ sic loquentem inducit personam Regis, *Nulli vendemus, nulli negabimus, aut differemus Justitiam vel Rectum.*

Quod si antiquæ leges celeberrimæ istius Insulæ, cæteris omnibus non excelluissent, fieri profecto non possit, quin ex tot victoribus dominisq; cum penes singulos esset, five Romani, five Saxones, five Dani, five Normani, precipue vero Romani, qui de jure suo civili merito gloriantur, eas immutassent

Pone tibi, Lector, ante oculos ad solatium & alacritatem tuam in hoc studio, sapientes nostri juris qui aliquot retro actis sæculis vixerunt, nequam invenies qui aliquando jura hæc calluerit, quin ab uberibus quasi divi-

vina



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vine illius scientiæ, honestate, gravitatem, integritatem una suxerit, & singulari Dei beneficio, majori ornamento familiæ posterisque suis extiterit, quam quicunque cujuscunque professionis alii; id quod sequens pagina in aliquibus saltem ex magno numero indicabit; manent enim indubitata & constans illa veritas, *Justus ut Palma florebit, & sicut Cedrus Libani multiplicabitur.*

Horum igitur exempla, una cum hoc tuo instituto vitæ, studium ac virtutem requirunt: Neque enim hæcenus vidi hominem impura & improba vita, solidam perfectamque nostri Juris scientiam attigisse: Neque quencquam ex adverso, præstantis judicii in hoc jure observavi, qui non idem (hujusmodi Magistrum nactus) honestus fidelis, probus evaserit.

Quod si quando Jurisperitorum discrepantes paulo sententiæ occurrant, contendite ipsi (sicut æquum est) ad scientiæ istius culmen, & intelligetis profecto, *Hominum hæc, non Artis vitia esse.* Neque enim (ut quod res est dicam) difficiles propemodum ac spinosæ questio-

*Knowledge, Honesty, Gravity, and Integrity, and by the Goodness of God hath obtained a greater Blessing and Ornament than any other Profession to their Family and Posterity, as by the Page following, taking some for many, you may perceive; for it is an undoubted Truth, That the Just Psalm 91. shall flourish like the ver. 13. Palm-Tree, and spread abroad as the Cedars of Libanus.*

*Their Example and thy Profession do require thy Imitation: For hitherto I never saw any Man of a loose and lawless Life, attain to any sound and perfect Knowledge of the said Laws: And on the other Side, I never saw any Man of excellent Judgment in these Laws, but was withall (being taught by such a Master) honest, faithful, and virtuous.*

*If you observe any Diversity of Opinions amongst the Professors of the Laws, contend you (as it becometh) to be learned in your Profession, and you shall find, that it is Hominis vitium non professionis. And to say the Truth, the greatest Questions arise not upon any of the Rules of the*

*The Cause of Diversity of Opinions.*



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*the Common Law; but sometimes upon Conveyances and Instruments made by Men unlearned; many Times upon Wills intricately, absurdly, and repugnant set down, by Parsons, Scriveners and such other Imperites: And oftentimes upon Acts of Parliament, overladen with Proviso's and Additions, and many Times on a sudden penn'd or corrected by Men of none or very little Judgment in Law.*

**The Remedy.**

*If Men would take sound Advice and Counsel in making of their Conveyances, Assurances, Instruments, and Wills; and Counsellors would take Pains to be rightly and truly informed of the true State of their Client's Case, so as their Advice and Counsel might be apt and agreeable to their Client's Estate; and if Acts of Parliament were after the old Fashion penn'd, and by such only as perfectly knew what the Common Law was before the making of any Act of Parliament concerning that Matter, as also how far forth former Statutes had provided Remedy for former Mischiefs and De-*

*nes ex principiis juris oriuntur, sed aliquando ex imperitia hominum pactiones aut instrumenta conscribentium; sæpius ex testamentis perplexis absurdis, pignantibusque, si-ve ab ecclesiæ alicujus rectore factis, si-ve a tabellione & scriba, si-ve ab imperito quocunq; alio nunquam denique ex ipsius comitiorum institutis, cautionum atque additionum mole onustis, & vel in pulvere ac festinatione conscriptis, vel a Sciolo quopiam in hoc genere correctis & emendatis.*

*Quod si homines in testamentis, contractibus & instrumentis aliis conficiendis solidum ac maturum judicium adhiberent, operamq; & laborem diligentem insumerent Consilarii in clientum suorum causis recte ac limatè perorandis, quo apte & ad rem ipsam accommodatè imprimis respondeant: Et si leges publicis comitiis sancitæ, non nisi antiqua ratione scriberentur, ab illis scilicet qui exploratè norunt, quid de quaque re postulata jus regni antiquum præstituerit, quousque etiam instituta vetera, malis & incommodis illorum temporum experientia relectis providerint*

*& de*

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& occurrerint, certe quidem tum quæstiones in jure perpauca oriuntur, neque se torquerent adeo viri docti, in conciliandis aptandisque secundum juris regulas, verbis, sententiis, & cautelis pugnantibus alioqui inter se planeque incommodis ac ineptis.

Quinetiam adeo certum est Jus nostrum sibiq; constans, ut ex toto illo tempore quo studium & institutum hoc vitæ sum ingressus, ne duas quidem adverti quæstiones de jure hæreditatum, de terrarum legitima confiscatione sive (ut loquuntur) rescata aliisq; consimilibus. Felices merito perhiberentur artes, siquidem primo qui eas profitentur, summa cura ac religione in id incumbere, ut possent plenam perfectamque earum cognitionem adipisci: Deinde si in eas nullus censoriam auctoritatem, absque judicio & doctrina censoria in se assumeret.

Humanissimi Lectores, fecit gratus ac benevolus vester animus quo superiorem elucubrationum mearum editionem prosecuti & amplexi estis, ut quod de secunda hac, numero causarum aucta, prius promiseram nunc ex-

fectis discoverat by Experience: then should very few Questions in Law arise, and the learned should not so often and so much perplex their Heads, to make Atonement and Peace by Construction of Law between insensible and disagreeing Words, Sentences, and Provisoës, as they now do.

In all my Time, I have not known two Questions made of the Right of Discents, of Escheats by the Common Law, &c. so certain and sure the Rules thereof be: Happy were Arts, if their Professors would contend, and have a Conscience to be learned in them, and if none but the Learned would take upon them to give Judgment of them.

Your kind and favourable Acceptation (gentle Reader) of my former Edition, hath caused me to publish these few Cases in Performance of my former Promise, and I wish to you all no less Profit in reading of them than I persuade



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*persuade myself to have  
reaped in observing of them:  
This only of the Learned I  
desire:*

olunt, in quibus legendis  
non minorem vobis ex-  
opto fructum, quam (sicut  
mihi persuadeo) in colli-  
gendis ipse perceperim.  
Hoc tantum a doctis peto:

**Perlege, sed si quid novisti rectius istis,  
Candidus imperti; si non hiis utere mecum.**



*Seneca ad Lucil. Epist. 108.*

**I**LLUD tamen prius scribam, quemadmodum tibi ista cupiditas discendi, qua flagrare te video, regenda sit, ne ipsa impediatur; nec passim carpenda sunt, nec avide invadenda universa: Per partes pervenitur ad totum: Aptari onus viribus debet, nec plus occupari, quam cui sufficere possumus: Non quantum vis, sed quantum capis hauriendum est: Quo plus recipit animus, hoc se magis laxat.

Lectio certa prodest, varia delectat; qui quo destinavit pervenire vult unam sequatur viam, non per multas vagetur, non ire istud sed errare est.

**T**HIS first will I set down, (which else might hinder thee) how thou art to order that fervent Desire of Learning which I find to be in thee; Things are not every where to be alike gathered, nor universally all greedily snatch'd: The Whole is to be attained unto by Parts: Burdens must be fitted to the Strength of the Bearers; neither should we gripe more than we are able to hold: Draw out so much as may satisfy not thy Will but thy Want: The very Mind of Man the more it receiveth, the more it loosens and freeth itself.

Certainty in Reading is profitable, Variety delightful; he that desireth to come to his Journey's End, must pursue one Way, not wander in many, for that is rather to err than to go forward. *Idem Epist. la 45.*

*Idem ad Lucil. in Epist.*

Non refert quam multos, sed quam bonos habeas Libros; multitudo librorum onerat non instruit, & fatius est paucis

It matters not how many Books thou hast, but how good; Multitude of Books do rather burden than instruct; and it is far better

thoroughly to acquaint thy-  
self with a few Authors, than  
to wander thorough many.

authoribus te tradere, quam  
errare per multos.

Fero. Epist. 88.

Take thyself at so many  
Hours for Reading, that thou  
mayst do it rather with De-  
light than with Toil.

Statue tibi quot horis  
legas, non ad laborem  
sed ad delectationem.

# Paschæ 26. Elizabethæ

## Reginæ, Rotul' 1608.

**R**ichardus Manser nuper de London *Peoman* alias dictus  
 Rich. Manser de Gillingham in com' Kanc' *Peoman*,  
 sum' fuit ad respondend' Will' Painter arm', de placito qd'  
 reddat ei xl. li. quas ei debet, & injuste detinet, &c. Et un-  
 de idem Will' per Thom' Antrobus attorn' suum dicit, qd'  
 cum præd' Ric. vj. die Aprilis, Anno Regni Domine Re-  
 ginæ nunc xij. apud Londinum in Parochia beatæ Mariæ de  
 Arcubus, in Warda de Cheape, per quodd' scriptum suum  
 obligationum, concessisset se teneri eidem Will' in præd' xl. li.  
 solvend' eidem Will' in festo Ascensionis domini tunc proxim'  
 sequen': Præd' tamen Ric. licet sepius requisit' præd' xl. li.  
 eidem Will' nondum reddidit, sed illas ei hucusq; reddere  
 contradixit, & adhuc contradicit, unde dicit qd' deteriora-  
 tus est, & dampnum habet ad valenciam x. li. & inde pro-  
 ducit sectam, &c. Et profert hic in curia scriptum præd'  
 quod debitum præd' in form' præd' testatur, cujus datum est  
 die & anno suprad', &c. Et præd' Ric. per Joh. Cooke at-  
 torn' suum venit & defendit vim & injuriam quando, &c.  
 Et petit auditum scripti præd' & ei legitur, &c. Petit  
 etiam audit' indorsamenti ejusd' scripti, & ei legitur in  
 hæc verba. **The Condition of this Obligation is such,**  
**That whereas the within bounden Richard Manser and**  
**John Manser his Son, by their Deed of Feoffment,**  
**bearing the Date of this Obligation, have given,**  
**granted and confirmed, unto the within named Wil-**  
**liam Painter, and his Heirs, all that Parcel of Wood-**  
**land called Southwood, containing by Estimation Ten**  
**Acres, be it more or less, lying together in the Parish**  
**of Gillingham within said, and Bedherst in the Coun-**  
**ty within said, to the Lands of one Thomas Mansley,**  
**towards the East, West, and North, and to the**  
**King's Highway towards the South, as by the same**  
**Deed more at large it appeareth, if the said William**  
**Painter, and his Heirs, shall and may at all Times here-**  
B
after



after, have, hold and enjoy all the foresaid Parcel of Woodland, with the Appurtenances, discharged or saved harmless, of, and from all and every former Bargain, Sale, Gift, Grant, Lease, Right, Jointure, Dowry, Rent Charge, and all other Things and Incumbrances whatsoever, had, made, or suffered to be done by the said R. Manser, or his Heirs or Assigns: And also if the said R. Manser, and J. Manser his Son, and their Heirs, and the Heirs of either of them, do at all Times hereafter, upon Request to them or any of them made, at the only Costs and Charges of the said W. Painter, his Heirs and Assigns, make, seal, deliver, acknowledge, and do all and every such further reasonable Act and Acts, Thing and Things, Devise and Devices in the Law, as shall be reasonably devised or required to be done by the said W. Painter, his Heirs or Assigns, or his or their Council learned in the Law, for the further Assurance, Surety, and sure making of the foresaid Parcel of Woodland, with the Appurtenances, unto the said W. Painter, his Heirs and Assigns: That then this present Obligation to be void, or otherwise to remain in his Force and Vertue. Quibus lectis & auditis, idem Ric. dicit quod pred' Will' actionem suam pred' versus eum habere non debet, quia dicit quod pred' Will' a tempore confectiois scripti pred' usq; diem impetrationis brevis originalis ipsius Will', sc. xiv. diem Octobris, anno regni dictæ dom' Reginæ nunc xxvi. habuit, tenuit, & gavisus fuit, totam pred' parcellam bosci cum pertin' vocat' Southwood, in conditione pred' superius specificat', indemne conservat' de & ab omnibus & singulis prioribus bargainis, venditionibus, donis, concessionibus, dimissionibus, juribus, juncturis, dotibus, redditibus oneratis, & de omnibus aliis oneribus, & incumbantiis quibuscunq; habit' factis vel permissis fieri per ipsum R. Manser, heredes vel assign' suos, secund' form' & effect' indorsamenti illius; Et idem Ric. Manser ulterius dicit, quod post confectioem scripti pred', & ante pred' diem impetrationis brevis originalis pred', sc. x. die Aprilis, anno regni dictæ dom' Reginæ nunc xxvi. predict', Will' Painter apud Gillingham in comitatu Kent' devisavit in scriptis quoddam scriptum relaxationis inter eundem Will' Painter & ipsum Ric. Manser, & præfat' Joh. Manser, & ad tunc & ibidem requisivit ipsum Ric. & præfat' Joh. quod scriptum illud ut factum suum deliberarent, super quo idem Ric. scriptum illud apud Gillingham predictam, sigillavit & deliberavit ut factum ipsius Ric. præfat' Will': Et ulterius idem Ric. dicit, quod prædictus Joh. filius ipsius Ric. in conditione predicta nominatus, super pred' requisitionem predicti Will' eidem Joh. factam, ad sigillandum & deliberandum scriptum illud ut factum suum, super monitionem

strationem predicti scripti relaxationis sic devisat, pro eo quod predictus Joh. minime literat' fuit & nescivit legere, neq; discernere content' sive materiam ejusdem scripti, apud Gillingham predictam adtunc requisivit de præfat' Will' Painter scriptum pred' sibi deliberari, ad monstrand' illud homini erudit' qui scriptum pred' sibi legere potuisset. Ita quod ipse super lectionem inde de contentis ejusdem ipsum informare potuisset, utrum scriptum illud factum esset secundum tenorem conditionis pred' necne; Idemq; Joh. dixit adtunc & ibidem quod ipse scriptum illud sigillare & deliberare vellet, si scriptum illud factum esset secund' tenorem conditionis pred': Sed pred' Will' adtunc & ibid' recusavit deliberare eidem Joh. scriptum pred' ad ostendend' homini in lege erudit', qui illud eidem Joh. legere potuisset: per quod pred' Joh. non sigillavit, neq; deliberavit scriptum præd' præf. Will' super requisitionem pred' Will', modo & forma pred' fact'. Et pred' Rich. Manser ulterius dicit, quod a tempore confectiois scripti pred', usq; pred' diem impetrationis brevis pred', non fuerunt aliqua alia ulteriora act' vel acta, devisament' vel devisamenta, per pred' Will' vel Consilium suum erudit' devisat' & requisit' fieri præf. Will' Painter pro ulterior' assuran', securitate, & segura factioe pred' parcellæ bosci cum pertinentiis per præfat. Ric. Manser & Joh. Manser sive eorum alterum, præf. Will' Painter hered' & assign' suis, secundum formam & effectum conditionis pred' fiend': Et hoc parat' est verificare, unde petit judicium si pred' Will' actionem suam pred', versus eum habere debeat, &c. Et pred' Will' dicit, quod pred' placitum pred' Ric. modo & forma pred' superius placitat', minus sufficien' in lege existit ad ipsum Will' ab actione sua pred' versus præf. Ric. habend' præcludendum; quodq; ipse ad placitum illud modo & forma pred' placitatum necesse non habet, nec per legem ter' tenetur respondere, Et hoc parat' est verificare, unde pro defectu sufficien' placiti in hac parte, idem Will' petit judicium & debitum suum pred', unacum dampnis suis occasione detentionis debiti illius sibi adjudicari, &c. Et pred' Ric. ex quo ipse sufficien' materiam in lege ad pred' Will. ab actione sua pred' versus ipsum Ric. habend' præcludend' superius allegavit, quam ipse parat' est verificare. Ad quam quidem materiam pred' Will' non dedic', nec ad eam aliquammodo respondet, sed verificationem illam admittere omnino recusat, ut prius petit judicium, & quod pred' Will' ab actione sua pred' versus ipsum Ric. habend' præcludatur, &c. Et quia Justic' hic se advisare volunt de & super præmissis priusquam judicium inde reddant, dies datus est partibus pred' hic usq; in Crastino sanctæ Trinitatis de audiendo inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Will' Painter, quam præd' Ric. Manser per attorn' suos pred', Et quia Justic' hic ulterius se



advifare volunt de & super premissis priusquam iudicium inde reddant, dies ulterius datus est partibus præd' hic usq; in Octabis sancti Michaelis de audiend' inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Will' Painter quam præd' Ric. Manser per atorn' suos præd'. Et super hoc visis præmissis, & per Justic' hic plene intellectis, videtur eisdem Justic' hic, quod præd' placitum præd' R. Manser superius in barram placitat', minus sufficien' in lege existit ad ipsum Will' ab actione sua præd' versus præf. Ric. habend' præcludend', prout præd' Will' Painter superius allegavit: Ideo (a) concessum est, quod præd' Will' Painter recuperet versus præf. R. Manser debitum suum præd', & dampna sua occasione detention' debiti illius ad viginti marcas, eidem Will' ex assensu suo per Cur' hic adjudicat'. Et præd' Ric. in misericordia, &c. Postea scilicet x. die Junii, anno regni dominæ reginæ nunc xxviii. venit hic in Cur' præd' Will' Painter per præd' Thom' Antrobus atorn' suum, per speciale warrant' ei in hac parte constitut'. Et cogn' quod satisfactum est ei de debito, & dampnis præd', Ideo præd' Ric. de debito & dampnis illis sit quietus, &c.

(a) 1 Co. 32. a.  
40. a. 83. a. 119.  
b. 1 Rol. Rep.  
278, 279.  
3 Bulstrode. 92.  
93, 94. 1 Rol.  
771, 774. Cr.  
Car. 442, 443.  
Cr. Jac. 6, 386.  
622. Yel. 130.  
Hob. 17. 19. 194.  
337. Stat. 16 &  
17 Car. 2. c. 8.  
Stat. 22 & 23  
Car. 2. c. 4.  
Jenk. Cent. 13  
Cr. El. 145.  
Palm. 260. Noy  
77. N. Benl. 184.  
pl. 226. Poph.  
203. 212. Latch.  
76. 83. 188.  
4 Bulstr. 125.  
126. 179. 1 Sid.  
70.



Pasch. 26 Eliz.

Rot. 1608. in Communi Banco.

MANSER'S Case.

**B**ETWEEN *Painter* and (a) *Manser*, the Case was (a) Moor 182.  
 thus: *Painter* brought an Action of Debt upon an<sup>12 Co. 89.</sup>  
 Obligation against *Manser*, and the Defendant pleads<sup>1 Roll. 440.</sup>  
 the Obligation was with Condition, *sc.* That whereas the<sup>4 Leon. 62.</sup>  
 Def. had enfeoffed the Pl. of certain Lands, if the Pl. shall at  
 all Times following enjoy those Lands discharged, or other-  
 wise kept indemnified from all Incumbrances, &c. and  
 also if the Def. and *John Manser* his (b) Son, shall do all Acts (b) 3 Bulstr. 12a  
 and Devises for the better Assurance of those Lands to him,  
 as by the Pl. or his Council learned in the Law shall be  
 devised, that then the Obligation shall be void; and pleads  
 that the Pl. had enjoy'd the said Lands discharged and kept  
 indemnified from all Incumbrances, &c. and that the  
 Pl. devised a Writing of Release to be made by the Def.  
 and *John* his Son, to the Pl. which the Def. did seal and  
 deliver as his Deed; and because his Son was not lettered,  
 and could not read, the said *John* prayed the Pl. to deliver  
 it to him, to be shewed to some Man learned in the Law,  
 who might inform him if it was made according to the  
 Condition; and said further, that if it was according to the  
 Condition, he would deliver it: which the Pl. refused;  
 wherefore he did not deliver it, as it was lawful he  
 should not: Whereupon the Pl. demurred; and it was  
 adjudged for the Pl. In this Case three Points were  
 resolv'd, (1.) That if a Man not lettered be bound to  
 make a Deed, he is not bound to seal and deliver any  
 Writing tender'd to him, unless some Body be present  
 who can (c) read the Deed to him, if he requires the Wri- (c) Inf. 9. b.  
 ting to be read to him; and if the Deed be in Latin, French,<sup>1 Jones 314.</sup>  
 or other Language (which the Party who is to execute  
 the Writing doth not understand) in such Case, if the  
 Party

advifare volunt de & super premissis priusquam iudicium inde reddant, dies ulterius datus est partibus præd' hic usq; in Octabis sancti Michaelis de audiend' inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Will' Painter quam præd' Ric. Manser per atorn' suos præd'. Et super hoc visis præmissis, & per Justic' hic plene intellectis, videtur eisdem Justic' hic, quod præd' placitum præd' R. Manser superius in barram placitar', minus sufficien' in lege existit ad ipsum Will' ab actione sua præd' versus præf. Ric. habend' præcludend', prout præd' Will' Painter superius allegavit: Ideo (\*) concessum est, quod præd' Will' Painter recuperet versus præf. R. Manser debitum suum præd', & dampna sua occasione detention' debiti illius ad viginti marcas, eidem Will' ex assensu suo per Cur' hic adjudicat'. Et præd' Ric. in misericordia, &c. Postea scilicet die Junii, anno regni domine regine nunc xxviii. venit hic in Cur' præd' Will' Painter per præd' Thom' Antrobus atorn' suum, per speciale warrant' ei in hac parte constitut'. Et cogn' quod satisfactum est ei de debito, & dampnis præd', Ideo præd' Ric. de debito & dampnis illis sit quitus, &c.

(\*) 1 Co. 32. 2.  
40. 2. 83. 2. 119.  
b. 1 Rol. Rep.  
278, 279.  
3 Bulstrode. 92.  
94, 94. 1 Rol.  
771, 774. Cr.  
Car. 442, 443.  
Cr. Jac. 6, 386.  
622. Yel. 130.  
Hob. 17. 19. 194.  
337. Stat. 16 &  
17 Car. 2. c. 8.  
Stat. 23 & 23.  
Car. 2. c. 4.  
Jenk Cent. 13  
Cr. El. 145.  
Palm. 260. No 7  
77. N. Benl. 184.  
pl. 226. Poph.  
203. 212. Larch.  
76. 83. 188.  
4 Bulstr. 125.  
126. 179. 1 Sid.  
70.

Pasch. 26 Eliz.

Rot. 1608. in Communi Banco.

MANSEY'S Case.

**B**ETWEEN *Painter* and (a) *Manser*, the Case was (a) Moor 182.  
 thus: *Painter* brought an Action of Debt upon an<sup>12 Co. 89.</sup>  
 Obligation against *Manser*, and the Defendant pleads<sup>1 Roll. 440.</sup>  
 the Obligation was with Condition, *sc.* That whereas the<sup>4 Leon. 62.</sup>  
 Def. had enfeoffed the Pl. of certain Lands, if the Pl. shall at  
 all Times following enjoy those Lands discharged, or other-  
 wise kept indemnified from all Incumbrances, &c. and  
 also if the Def. and *John Manser* his (b) Son, shall do all Acts (b); Bulstr. 30.  
 and Devises for the better Assurance of those Lands to him,  
 as by the Pl. or his Council learned in the Law shall be  
 devised, that then the Obligation shall be void; and pleads  
 that the Pl. had enjoy'd the said Lands discharged and kept  
 indemnified from all Incumbrances, &c. and that the  
 Pl. devised a Writing of Release to be made by the Def.  
 and *John* his Son, to the Pl. which the Def. did seal and  
 deliver as his Deed; and because his Son was not lettered,  
 and could not read, the said *John* prayed the Pl. to deliver  
 it to him, to be shewed to some Man learned in the Law,  
 who might inform him if it was made according to the  
 Condition; and said further, that if it was according to the  
 Condition, he would deliver it: which the Pl. refused;  
 therefore he did not deliver it, as it was lawful he  
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 solv'd, (1.) That if a Man not lettered be bound to  
 make a Deed, he is not bound to seal and deliver any  
 Writing tender'd to him, unless some Body be present  
 who can (c) read the Deed to him, if he requires the Wri- (c) Inf. 9. b.  
 ng to be read to him; and if the Deed be in *Latin*, *French*,<sup>1 Jones 314.</sup>  
 or other Language (which the Party who is to execute  
 the Writing doth not understand) in such Case, if the  
 Party



## MANSEY'S Case.

- Party demands that one should read and interpret the Writing to him, and none be present that can read and expound the Tenor of the same in that (a) Language that the Party who is to deliver the Deed understands, there the Party may well refuse to deliver it. So, it is although the Man can read (b), yet if the Deed be endited in *Latin, French*, or other such Language as the Party who is to execute cannot understand, if he demands that the Writing be (c) read or expounded to him in such Language as he may understand it, and no Body be there to do it, the Party may refuse to deliver it.
- (a) *Inf. 9. b.*  
 (b) *12. Co. 89.*  
 (c) *11. Co. 27.*  
 (d) *Plowd. 19. 2.* And it is to be observed, *quod (d) ignorantia est duplex, viz, facti & juris; & rursum ignorantia facti (quoad rem nostram attinet) est duplex, videlicet, lectionis & lingua.* Note, Reader, that Ignorance in Reading, or Ignorance of the Language, *que sunt ignorantia facti*, may excuse; but as is commonly said (e), *Ignorantia juris non excusat*: for notwithstanding it was said there, that altho' the Party might read, and understand the Language also in which the Writing was made, yet he might not know the Sense and Operation of the Words in Law, and whether they agree with the Condition of his Obligation or not; and therefore *prima facie* some of the Justices did seem to hold, that in such Case the Party shall have (f) reasonable Time to shew the Writing to his Council learned in the Law, to be instructed by them whether it be according to what he is bound to do, and namely when there is no Time limited, in which it is to be done, so as in regard that the other Party might request the doing of it when he pleased, it is not possible for the Party to have his Council at all Times with him: and therefore it seems reasonable, *prima facie*, that the Party shall have reasonable Time, as is aforesaid. But at last, upon the View of the Record of a Judgment in this Court, *An. 16. Eliz.* in the Time of the Lord Dyer, between Sir *Anthony Cook* and *Wotton*, that upon such Request made to Sir *Anthony Cook* (g) by *Wotton*, to seal an Indenture, Sir *Anthony*, who was not learned in the Law, was obliged to seal it peremptorily at his Peril, and could not obtain convenient Time to consult upon it with his Council; hereupon it was resolved in the Case at the Bar according to the said Judgment. See the Case now reported by the Lord Dyer. And it was said, that the Case at the Bar was stronger than that of Sir *Anthony Cook*; for in this Case the Def. obliged himself, that his Son, who was a Stranger to the Obligation, should do, &c. In which Case he has undertaken that his Son shall do it at his Peril; for he that is obliged, undertakes more for a (h) Stranger than for himself, in many Cases. *Vide (i)* 33 *H. 6.* 16. b. 36 *H. 6.* 8. 2 *E. 4.* 2. 15 *E. 4.* 5. b. 22 *E. 4.* 43. and 10 *H. 7.* 14. b. It was resolved that the Pleading was insufficient; for he hath pleaded, That the Pl. had enjoyed the Land discharged
- (e) 1 *Jones* 314.  
 1 *Co.* 177. b.  
 14 *H. 8.* 26. b.  
 (f) *Cr. El. 9.*  
*Cr. Car.* 299.  
*Vide Dyer, Tr.*  
 26 *El. placito* 39.  
 50. 337. & 338.  
 (g) 4 *Leon.* 63.  
 190. 1 *Jones* 314.  
*Dyer* 337. 338.  
 pl. 39. 1 *Ander.*  
 53. *New Benl.*  
 328. pl. 260.  
 5 *Co.* 8. 2. 19. a.  
 3 *Rol.* 424. 440.  
*Godb.* 445.  
 (h) *Moor* 183. 3  
*Bulst.* 30. 5 *Co.*  
 23. b. *Cr. El.* 716.  
 864. *C. Lit.* 209.  
 a. 1 *Rol.* 452.  
 6 *Co.* 31. a.  
 2 *Rol. Rep.* 196.  
 2 *Rol.* 402. *H. 2.*  
*Perk. Sect.* 756.  
 15 *E. 4.* 5. b. 6. a.  
*Br. Condition.*  
 62. 242.  
 (i) 2 *Rol. Rep.*  
 196. 3 *Bulst.*  
 29. 30. 5 *Co.*  
 23. b. *Br. Co-*  
*venant.* 3. *Br.*  
*Condition.* 13.  
*Fitz. Bar.* 62.

## PART II. MANSER'S Case.

4

discharged and kept harmless from Incumbrances, where he ought to have shewed how: So if he had (a) pleaded, That he had saved him harmless, he ought to have shewed how; but in such Case, if he had pleaded in the negative, *Non fuit damnificatus*, there it is otherwise. Secondly, He hath pleaded, *Quod quoddam (b) scriptum relaxationis* was sealed and delivered, and doth not shew whether the Release concerns the Land mentioned in the Condition, and for all these Causes the Plaintiff had Judgment to recover.

*Note Reader*, There is great Reason, that the Writing should be expounded in such Language, that the Party may understand it, although he could read, because by the Law he is at his Peril to (c) deliver it presently upon Request, and hath not Time to consult upon it with Council learned in the Law.

(a) Cr. Jac.  
165, 340, 359.  
363, 503, 634.  
Moor 857. Hob.  
13. 296. Cr.  
El. 253, 393, 477.  
914, 916. Cr. Car.  
384. 2 Leonard  
214. Kelw. 80. b.  
95. b. 5 H. 7. 8.  
a. 6 H. 7. 6. a.  
Plowd. 7. b.  
33. b. Co. Lit.  
303. a. Dyer 43.  
Pl. 18, 19. Br.  
Condition 133.  
in fine, 9 Co.  
25. a. 1 Leon.  
71. Winch. 9.  
Hardres 133.  
2 Rol. Rep. 159.  
488. Doctrin.  
Placit. 58, 270.  
40 E. 3. 20. a.  
Moor 3. Pl. 9.  
Bro. Cond. 185.  
3 Mod. 252.  
3 Mod. 243.  
(b) Moor 183.  
(c) Cr. El. 9.

Hill. 26 Eliz.

Rot. 1038. in the Common Pleas.

## GODDARD's Case.

- (a) 3 Leon. 100. (a) **G**oddard, Administrator of *James Newton*, brought an Action of Debt against *John Denton*, upon a Bond made to the Intestate, bearing Date 4 Aprilis 24 Eliz. The Defendant pleaded, That the Intestate died before the Date of the Bond, and so concluded, that the said Writing was not his Deed, upon which they were at Issue; the (b) Jury found that the Defendant did deliver it as his Deed, 30 Julii Anno 23 Eliz. and found the Tenor of the Deed in hac verba, *Noverint Universi, &c. dat. 4 Aprilis, Anno 24 Eliz.* and that the Intestate was living 30 Julii 23 Eliz. and that he died before the said Date of the Bond: And prayed the Advice of the Court, Whether this was (c) the Defendant's Deed: And it was adjudged by *Anderson* Chief Justice, *Windbam*, *Periam* and *Walmesley*, That it was his Deed, and the Reason of their Judgment was, That although the Obligee in Pleading cannot alledge the Delivery before (d) the Date, as it was adjudged in 12 H. 6. 1. (e) which Case was affirmed to be good Law, because he is estopped to take an Averment against any Thing expressed in the Deed, yet the Jurors, who are sworn to say the Truth, shall not be estopped, for an Estoppel is to conclude one to say the Truth; and therefore Jurors cannot be estopped, because they are sworn to say the Truth. Vide (f) 1 H. 4. 6. b. 35 Aff. & 17 E. 3. 6. Plow. Comm. 515. a. but if the Estoppel or Admittance be within the same Record in which the Issue is joined, upon which the Jurors shall give their Verdict, there they cannot find any Thing against that which the Parties have affirmed and admitted of Record, although the Truth be contrary; for the Court may give Judgment upon a Thing confessed by the Parties, and (g) Jurors are not to be charged with any such Thing, but only with Things in which the Parties differ. Vid. 28 Aff.
- (b) Cr. Car. 130, 131. 1 Jones 193.
- (c) Cr. Jac. 640.
- (d) 3 Keb. 333. Br. fairs 94. Perk. Sed. 149. (e) 2 Rol. 690. 4 Co. 53. a. Cr. El. 36, 37, 140, 309. Cr. Car. 110. Co. Lit. 227. a. 353. a. Owen 96. 1 Leon. 206. Savil. 98, 99. Dyer 147. Pl. 73. Cart. 155. Palm. 20. Hard. 483.
- (f) 1 H. 4. 5. b.
- (g) Raymond 47. 2 Rol. 691. Dyer 33. Pl. 8. 9 Co. 69. b. 28 Aff. 17. per Finchden, Br. Confession 27.



Aff. 34. 9 H. 6. 37. a. b. 3 & 4 Phil. & Mar. Dyer (a) 147. (a) Dyer 147.  
 And the (b) Date of a Deed is not of the Substance of a Deed; (b) Co. Lit. 6.  
 for if it hath no Date, or hath a false or impossible Date, as a. 46. b. 1 Rol.  
 the thirtieth Day of February, yet the Deed is good; for 849. 2 Rol. 21.  
 there are but three Things of the Essence and Substance of a Mod. Rep. 180.  
 Deed, that is to say, writing in Paper or Parchment, Seal- Noy 21. 35.  
 ing and Delivery, and if it hath these three, although it Keilw. 34. b.  
 wanted, In (c) *cujus rei testimonium sigillum suum apposuit*, Plow. 231. b.  
 yet the Deed is sufficient, for the Delivery is as necessary to the 491. Cro. Car.  
 Essence of a Deed, as the putting of the Seal to it, and yet it 78. 1 Jones 149.  
 need not to be contained in the Deed, that it was delivered. Latch 158. Cr.  
 And note, the Order of making a Deed is, first to write it, Jac. 261. Yelv.  
 then to seal it, and after to deliver it, and therefore it is not 194. Carr. 158.  
 necessary that the Sealing or Delivery be mentioned in the 1 Brownl. 120.  
 Writing, forasmuch as they are to be done after. And so Perk. 25. b.  
 it was said it was resolved in Henry the Eighth's Time. See Moor 28.  
 Reader 40 E 3. 2. a. and an Opinion in 7 H. 7. 14. a. to the (c) Moor 3.  
 contrary; but see the Case cited in the Time of H. 8. now Co. Lit. 6. a. 7.  
 reported by the Lord Dyer (d) 28 H. 8. 19. and believe, a. 229. b. 2 Inst.  
 Reader, the late Judgments are grounded upon full and 78. Keilw. 34. b.  
 pregnant Reason. And when a Deed is delivered, it takes 70. b. 3 Rol.  
 Effect by the Delivery, and not from the Day of the Date. 21. 22. Perk.  
 And therefore be the Deed without Date, or of a false or 27 b. 28. a.  
 impossible Date, yet the Deed is good. Secondly, By this Br. factis 104.  
 Judgment it is to be observed, That if a Man bring an Br. Obliga-  
 Action of Debt, and declares, That the Defendant 4 Apri- tion 8. 7 H. 7.  
 is 24 Eliz. made a Bond, bearing Date the same Day and 14. b. 8 H. 6.  
 Year, and the Defendant pleads *Non est factum*, and it is 35. a. Dyer 19.  
 found that the Deed was (e) delivered at another Day be- Pl. 113. 22. Pl.  
 fore or after the Day which the Plaintiff hath declared, 140. 1 Leon.  
 that yet Judgment shall be given for the Plaintiff, foras- 25. 3. Bulst.  
 much as the Date is not material, and the Defendant cannot 300. 301. 302.  
 be twice charged. And many Times Bonds are delivered at Old. Benl. 127.  
 other Days than they bear Date. So it appeareth by this Owen 33.  
 Judgment, that the mistaking of the Date of the Bond shall 40 E. 3. 2. a.  
 not hurt, upon *Non est factum* pleaded. Statham Obliga-  
 tion. 1.  
 (d) Dyer 19.  
 pl. 113.  
 (e) Plow. Com.  
 323. a. Cr. Jac.  
 136. Hob. 73.  
 149. Salk. 462.

Per

Per Trinitatis Recordum, Anno  
24 Eliz. Reginae, Rot. 928.

FILMER.

Ediz. II.

**W**illihelmus Cole nuper de Paringdon' magna in com' præd' gen', attachiatus fuit ad respondendum Will. Throughgood, de placito quare vi & armis clausum & domum ipsius Will. Throughgood, apud Paringdon' magnam fregit, & herbam suam ad valenc' xx.li ibidem nuper crescen', cum quibusdam averiis depastus fuit, conculcavit, & consumpsit, & alia enormia ei intulit ad grave dampnum ipsius Will. Throughgood, & contra pac' dominæ Reginae nunc, &c. Et unde idem Will. Throughgood, per Will. Aylesburie attorn' suum querit' quod præd' Will. Cole xii. die Octobris, an. reg. dominæ Reginae nunc xxiii. vi. & armis, &c. clausum & domum ipsius Will. Throughgood apud Paringdon' magnam fregit, & herbam suam ad valentiam, &c. ibidem nuper crescen' cum quibusdam av' iis, viz. equis, bobus, vaccis, porcis, & bidentibus depastus fuit conculcavit, & consumpsit, transgression' præd' quoad depastum conculcation' & consumption' herbæ præd' a præd' xii. die Octobris anno xxiii. suprad', usq; diem impetrationis brevis originalis ipsius Will. Throughgood, sc. vi. die Novemb. tunc proxim' sequent' div'is diebus & vicibus continuando, & alia enormia, &c. Ad grave dampnum, &c. Et cont' pac', &c. unde dic' quod deteriorat' est, & dampnum habet ad valenc' xl. li. & inde produc' sectam, &c. Et præd' Will. Cole per Tho. Raynold attorn' suum venit & defend' vim & injur' quando, &c. Et quoad venire & armis dic' quod ipse in nullo est inde culpabilis, & de hoc ponit se super patriam, & præd' Will. Throughgood similiter. Et quoad resid' transgres. præd' superius fieri supposit', idem Will. Cole dic', quod prædictus Will. Throughgood actionem suam præd' vers' eum habere non debet quia dic' quod clausum & domus præd' necnon loci in quibus supposit' transgres. præd' fieri, sunt & præd' tempore transgres. præd' superius.

superius fieri supposit', fuer' unum mesuagium & dua  
 re prati cum pertin' voc' *Pyehols tenement* in Paringdon  
 magna præd', quæ quidem tenta cum pertin' sunt & præd'  
 tempore transgres. præd' superius fieri supposit' fuer', solum  
 liberum ten'ta ipsius Will. Cole per quod idem Will.  
 præd' tempore quo, &c. clausum & domum præd', ut clau-  
 m & solum & liber' ten'tum ipsius Will. Cole propr' in  
 idem mesuagio & duabus acris prati cum pertin' fregit, &  
 erbam præd' ut herbam ipsius Will. Cole propriam ibid'  
 nc crescen', cum av'iis præd' depastus fuit, conculcavit,  
 consumpsit, prout ei bene licuit: Et hoc parat' est veri-  
 are, unde petit iudicium si præd' Will. Throughgood  
 tionem suam præd' vers. eum habere debeat, &c. Et præd'  
 ill. Throughgood dicit quod ipse per aliqua præallegat'  
 actione sua præd' habend' præcludi non debet, quia dic'  
 od clausum & domus præd' necnon loci in quibus trans-  
 f. præd' unde ipse superius se modo querit' fact' fuit,  
 et, & præd' tempore transgres. illius fact', fuer' unum  
 suagium voc' *Barrowes*, octo acr' terr' voc' *le great West*  
 4 acr' terr' voc' *Diggins holme*, & sex acr' terr' voc'  
*Robe field*, cum pertin' in Paringdon' magna præd', alia  
 am præd' mesuagium & dua acrae prati cum pertin' voc'  
*Pyehols ten't*, in barra præd' Will. Cole superius spec',  
 hoc parat' est verificare, unde ex quo præd' Will. Cole ad  
 transgres. præd' in ten'tis præd' cum pertin' de novo assign'  
 superius non respond', idem Will. Throughgood, per  
 iudicium & dampna sua occasione transgres. illius sibi  
 iudicari, &c. Et præd' Will. Cole quoad aliquam trans-  
 f. in præd' ten'tis de novo assign' superius fieri supposit',  
 quod præd' Will. Throughgood accionem suam præd' in-  
 vers. eum habere non debet, quia dicit quod diu ante  
 d' tempus transgres. præd' superius fieri supposit', præd'  
 ill. Throughgood fuit seiscitus de eisdem ten'tis cum per-  
 de (a) novo assign', in don'o suo ut de feodo: Et sic inde (a) 8 Co. 245. 2.  
 it' existens ante præd' tempus quo, &c. quidam finis post. 18. b.  
 vit in Cur' dominæ Reg. nunc, hic sc. apud Westm' in  
 ab' S. Hillarii, anno regni sui decimo, coram Jacobo Dyer,  
 thardo Weston, Johanne Walshe, & Richardo Harper  
 Justic'. Et postea a die Paschæ in xv. dies tunc proxim'  
 vent', concess. & recordat' coram eisdem Justiciariis, &  
 s dictæ dominæ Regi. fidelibus tunc ibi presentibus, inter  
 ill. Chicken & Elizabethæ uxorem ejus quer' & præd'  
 ill. Throughgood & Agnetem uxorem ejus deforc', de  
 mentis præd' cum pertinentiis inter alia, per nomina  
 us mesuagii, unius gardini, quadraginta quinque acrarum  
 æ, quinq; acrarum prati, decem acrarum pasturæ, &  
 tuor acrarum bosci cum pertinentiis in Paringdon' magna  
 oydon, unde placitum conventionis sum' fuit inter eos  
 adem cur' hic, sc'; Quod præd' Will. Throughgood &  
 Agnes



## THROUGHGOOD'S Case. PART II.

Agnes, recogn' tenementa præd' cum pertinentiis esse jus ipsius Will. Chicken, ut ill' que iidem Will. & Elizabetha habuerunt de dono præd' Will. Throughgood & Agnetis, & ill' remisit & quiet' clam' de ipsis Will. Throughgood & Agnete, & hered' suis præd' Will. Chicken & Elizabetha & hered' ipsius Willihelmi imperpetuum, qui quidem finis in forma præd' levatus, habitus & levatus fuit, ad usum præd' Willih. Chicken & Elizabethæ, & heredum ipsius Willihelmi imperpetuum, virtute cujus quidem finis præd' Will. Chicken & Elizabethæ fuer' seifiti de tenementis præd' cum pertinentiis, viz. predictus Will. Chicken in dominico suo ut de feodo, ac predict' Elizabetha in dominico suo ut de libero tenemento, pro termin' vitæ suæ, iidemque Will. & Elizab. sic inde seifi' existen', ante præd' tempus quo, &c. de eisdem tenementis cum pertinentiis seoffaverunt quendam Edwardum Turner armigerum, habendum sibi & hered' suis imperpetuum: virtute cujus seoffamenti præd' Edward' fuit de tenementis præd' cum pertinentiis seifit' in dn'ico suo ut de feodo, per quod idem Will. Cole ut serviens ipsius Edwardi & per ejus præceptum, præd' tempore quo, &c. clausum & domum præd', ut clausum & domum ac solum & liberum tenementum ipsius Edwardi propr' fregit, & herbam præd' ut herbam ipsius Edwardi propriam in eisdem tenementis cum pertinentiis de novo assign' tunc crescen', cum averiis præd' depastus fuit conculcavit, & consumpsit, prout ei bene licuit, & hoc parat' est verificare, unde petit judicium si præd' Will. Throughgood actionem suam præd' versus eum haber' debeat, &c. Et præd' Will. Throughgood, quoad præd' pl'itum præd' Will. Cole ad transgres. præd' in tenementis præd' cum pertinentiis de novo assign' fact' superius in barram inde placitat', dicit præd' ipse per aliqua in eodem placito præallegat', ab actione sua præd' inde habend' precludi non debet, quia dicit quod præd' finis habit' & levat' fuit ad opus & usum præd' Will. Chicken & Elizabethæ, & hered' & assign' ipsius Will. Chicken, super conditionem quod præd' Will. Chicken & Elizabetha, & hered' & assign' præd' Will. Chicken, bene & veraciter deliberarent & solverent eisdem Will. Throughgood & Agnet', & execut' & assign' suis octo libras bone & legalis monete Angliæ, & duodecim modios tritici & duodecim modios brassii, apud mansionalem domum vocat' Barrowes in Paringdon' præd' annuatim, durantebus naturalibus vitis eorundem Will. Throughgood & Agnetis, & eorum alterius diutius viven', ad festa sancti Michaelis Archangeli & Annunciationis beatæ Mariæ virginis, per equales porciones: Ac etiam super conditionem, quod præd' Will. Chicken & Elizabetha, heredes, executores, vel assign' sui, solverent eisdem Will. Throughgood & Agneti, execut', administratoribus, vel assign' suis septua-

ginta sex libras, tresdecim solidos, & quatuor denarios, consimilis monete Angliæ, apud præd' mansionalem domum voc' Barrowes in forma sequen' sc. ad festum sancti Michaelis Archangeli, in anno domini 1568. tres libras, sex solidos, & octo denarios, & sic extunc ad festum sancti Michaelis Archangeli apud domum mansionalem præd' tres libras, sex solidos, & octos denarios annuatim; quousque præd' summa septuaginta sex librarum, tresdecim solidorum, & quatuor denariorum plenar' satisfact', & solut' foret. Et pro non solutione, factione, & performatione præd' conditionum secund' veram intentionem & significationem conditionum, illarum præd' finis & cætera conveiantia premissorum tunc fiend' forent ad usum & opus ipsorum Will. Throughgood & Agnetis, ut in eorum priori statu, cujus quidem finis pretextu, præd' Will. Chicken & Elizabeth. fuer' seisciti de tenentis præd' cum pertinentiis de novo assign' inter alia, viz. præd' Will. in dominico suo ut de feodo, & præd' Elizabetha in dominico suo ut de libero tenemento pro termino vitæ suæ, super conditiones præd'. Et ulterius idem Will. Throughgood protestando quod præd' Will. Chicken & Elizabetha non solverunt, fecerunt, seu performaverunt aliqua secundum formam & effectum conditionum præd': Pro placito dicit quod prædicti Will. Chicken & Elizabetha, seu eorum alter, non solverunt nec solvit eisdem Will. Throughgood & Agneti, seu eorum alteri, quatuor libras, bonæ & legalis monete Angliæ ad festum sancti Michaelis Archangeli, anno regni domine Regine nunc decimo octavo, quas eis ad idem festum solvisse debuerunt, secundum formam & effectum præd' primæ conditionis, per quod idem Will. Throughgood, virtute finis præd', ac vigore cujusdam actus de usibus in possessionem transferend', in Parlamento domini Henr. nuper Regis Angliæ octavi, apud Westmon' in com' Midd', quarto die Februarii, anno regni sui vicesimo septimo, tent', edit', & provis. fuit seiscit' de tenementis præd' cum pertinentiis de novo assign' inter alia in dominico suo ut de feodo & in tenementa præd' de novo assign' intravit, ipsoq; Will. sic inde seiscit' existen', præd' Will. Cole die & anno in narratione præd' superius spec', vi & armis, &c. clausum & domum ipsius Will. Throughgood in præd' tenementis de novo assign' fregit, & herbam præd' ibidem tunc crescen' cum averiis præd' depastus fuit, conculcavit, & consumpsit, prout ipse superius vers. eum queritur. Et hoc parat' est verificare, unde ex quo præd' Will. Cole transgres. præd' in eisdem tenementis de novo assign' factam superius cogn', idem Will. Throughgood petit judicium & dampna sua, occasione transgr. illius sibi adjudicari, &c. Et præd' Will. Cole protestando quod præd' finis non fuit levatus ad usum prædictorum Will. Chicken & Elizabethæ super conditio-

nes



nes præd', prout præd' Will. Throughgood superius allegavit: Pro placito dicit, quod post finem prædictum levatum, scilicet secundo die Septembris, Anno regni dominæ Regine nunc decimo octavo, apud Paringdon magnam prædictam prædictus Willihelmus Throughgood per scriptum suum relaxationis, quod idem Willihelmus Cole sigillo prædict' Will. Throughgood signat' hic in curia profert, cujus dat' est eisdem die & anno, per nomen Will. Throughgood de Hunsdon in comitat' Hertford ~~Peoman~~, remisit, relaxavit, & pro se & heredibus suis imperpetuum quiet' clamavit, pref. Will. Chicken per nomen Will. Chicken de Hunsdon prædicta ~~Peoman~~, omnes & omnimod' conditiones, ingressiones pro conditionibus fractis, & demand' quæcunque ab initio mundi usque diem dat' scripti relaxationis illius. Et hoc parat' est verificare, unde ut prius pet' judicium, & quod præd' Will. Throughgood ab actione sua præd' versus eum habend' preclud', &c. Et præd' Will. Throughgood dicit, quod ipse est homo laicus & minime literatus, ac quod tempore confectionis præd' scripti relaxationis superius fieri supposit', divers. arrearag' præd' annual' solutionum superius recitat' in forma præd' solvend' aretro fuer', quodq; præd' scriptum relaxationis adtunc sibi lectum & declarat' fuit, quasi scriptum acquietancie omnium arrearagiorum denariorum sibi in forma præd' solvend' adtunc eidem Will. Throughgood aretro existen', & non solut' tantum; per quod idem Will. Throughgood credens scriptum illud fuisse scriptum acquietancie de arrearagiis denariorum præd' tantum, scriptum illud præf. Will. Chicken sigillavit & deliberavit, & sic idem Will. Throughgood dicit, quod idem scriptum in curia hic prolat' continens in se ipsum Will. Throughgood remisisse, relaxasse, & pro se & hered' suis imperpetuum quietum clamasse præf. Will. Chicken, omnes & omnimod' conditiones, ingressiones pro conditionibus fractis, & demand' quascunq; ab initio mundi, usq; diem dat' scripti relaxationis illius non est fact' suum. Et hoc petit quod inquiratur per patriam. Et præd' Will. Cole similiter. Ideo Prec' est vic' quod venire fac' hic a die S. Trinitatis in tres septimanas xii. &c. per quos, &c. Et qui nec &c. Ad recogn', &c. Quia tam, &c. Postea continuatur process. int' partes præd' de præd' placito, per Jurat' posit' inde int' eos in respect' hic usq; ad hunc diem, sc. in Crastinum S. Martini, anno regni dominæ reginæ nunc xv. Et modo hic ad hunc diem venerunt tam præd' Will. Throughgood, quam præd' Will. Cole per attorn' suos præd', & Jurat' inde impanellat' exacti similiter venerunt, qui ad veritatem de premissis dicend' electi, triat' & jurat' dicunt super sacrament' suum, quod præd' Will. Throughgood est homo laicus & minime literatus, quodq; diversa arrearagia annualia solutionum præd' præf. Will. Throughgood præd' rem



pore confessionis præd' scripti relaxationis a retro fuer' insolar', ac etiam quod idem script' relaxationis tempore sigillationis inde non fuit lectum præf. Will. Throughgood, sed quod postquam quidam Thom. Warde incepisset script' illud legere præf. Willihelm. Throughgood, quidam Jo. Warde script' illud extra manus præd' Thom. antequam primam lineam inde legisset eripuit, dicen' præf. Will. Throughgood hæc verba Anglicana sequen', viz. **Goodman Throughgood you are a Man unlearned, I will declare it unto you, and make you understand it better than you can by hearing it read.** Et postea præd' J. Warde præd' script' relaxationis præf. Will. Throughgood ad tunc & ibidem declaravit in Anglicanis verbis sequen', **Goodman Throughgood, the Effect of it is this, That you do release to Will. Chicken all the Arrearages of Rent that he doth owe you, and no otherwise, and then you shall have your Land again, tenementa præd' de novo assign' innuendo:** Ad quod præd' Will. Throughgood ad tunc respond' in Anglicanis verbis sequen', viz. **If it be no otherwise, I am content.** Et super hoc idem Will. Throughgood verbis præd' Joh. Warde fidem adhibens scriptum illud relaxationis tunc & ibid' sigillavit, & præf. Will. Chicken deliberavit. Sed utrum super tota materia præd' in forma præd' comperta, dictum scriptum relaxationis sit, & in lege adjudicari debeat, factum præd' Will. Throughgood necne, Jur' præd' penitus ignorant, & inde petunt advisamentum Justic' & cur' hic: Et si super tota materia præd' in forma præd' compert' videbitur eisdem Justic' hic quod script' illud non sit, nec in lege adjudicari debeat factum præd' Will. Throughgood, tunc iidem Jur' dicunt super sacramentum suum, quod præd' scriptum relaxationis non est factum præd' Will. Throughgood prout idem Will. superius allegavit. Et assid' dampna ejusdem Will. Throughgood occasione transgres. præd' ultra mis. & custag' sua per ipsum circa sectam suam in hac parte apposit' ad xx. s. & pro mis. & custag' suis ad xii. d. Et si super tota materia præd' in forma præd' comperta, videbitur Justic' hic quod scriptum præd' sit & in lege adjudicari debeat factum præd' Will. Throughgood, tunc iidem Jur' dicunt super sacramentum suum, quod præd' scriptum relaxationis est factum præd' Will. Throughgood, prout præd' Will. Cole superius allegavit. Et quia Justic' hic se advisare volunt de & super præmissis, priusquam judicium inde reddant, dies dat' est partibus præd' hic usq; in octabis S. Hillarii de audiend' inde iudicio suo, eo quod iidem Justic' hic inde nondum &c. Ad quem diem hic ven' tam præd' Will. Throughgood quam præd' Will. Cole per attorn' suos præd'. Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam judicium inde reddant, dies ulterius dat' est

est partibus præd' hic usq; a die Paschæ in xv. dies, de audiendo inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Will. Throughgood, quam præd' Will. Cole per attorn' suos præd'. Et quia Justic' hic ulterius se advisare volunt de & super præmissis priusquam iudicium inde reddant, dies ulterius dat' est partibus præd' hic usq; in Crastino S. Trinitas de audiend' inde iudicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam præd' Will. Throughgood, quam præd' Will. Cole per attorn' suos præd', Et super hoc visis præmiss. & per Justic' hic plene intellectis, conc' est quod præd' Will. Throughgood recuperet versus præd' Will. Cole dampna sua præd' ad xxi. s. per Jur' præd' in forma præd' assessa, necnon xlii. li. & x. & ix. s. eidem Will. Throughgood ad requisitionem suam pro mis. & custagiis suis præd', per cur' hic de incremento adjudicat', quæ quidem dampna in toto se atting', ad xx. & v. li. Et præd' Will. Cole capiatur, &c.

Mich

## Trin. 26 Eliz.

In the Common Pleas, Rot. 928.

## THROUGHGOOD'S Case.

Filmer,

*Throughgood* (a) brought an Action of Trespass for (a) Moor 148.  
 breaking of his Close against *Cole* Defendant, who 1 And. 129.  
 pleaded, That long Time before the Trespass, the Plain-  
 tiff released to one *William Chicken*, all Demands whatso-  
 ever, &c. whose Estate in the Land the Defendant hath,  
 and justified the Trespass. The Plaintiff said, That he was  
 a Lay-man, not lettered, and that at the Time of the said  
 Release made, divers Arrearages of an Annuity were due  
 to him by the said *William Chicken*, and that the said  
 Writing of Release was read and declared to him as a Wri-  
 ting of Acquittance for those Arrearages only; and that he  
 (giving Credit thereunto) did seal and deliver the same to  
 the said *William Chicken*, and so, not his Deed, upon which  
 Issue was joined; and the Jury found a special Verdict to this  
 Effect: That is to say, That the Plaintiff was a Lay-man,  
 not lettered, and that divers Arrearages of the said Annu-  
 ity were behind, and that the Writing was never read to  
 him; but after that one *Thomas Ward* had begun to read it  
 to the Plaintiff, and before he had read a Line of the Wri-  
 ting, one *William Ward* took the Writing out of his Hands,  
 saying to the Plaintiff, Goodman *Throughgood*, you are a  
 Man (b) unlearned, and I will declare it unto you, and (b) 1 And. 129.  
 make you understand it better than you can by hearing of Moor 148.  
 it read; And then said further to him, Goodman *Through-*  
*good*, the Effect of it is this, That you do release to *William*  
*Chicken* all the Arrearages of Rent that he doth owe you,  
 and no otherwise, and then you shall have your Land again:  
 to which the Plaintiff said, If it be no (c) otherwise I (c) 1 And. 129.  
 am content; and thereupon the Plaintiff giving Credit Moor 148.  
 to the said *William Ward*, delivered the said Release to  
 the said *William Chicken*, and whether this, upon the whole  
 Matter,



# THROUGHGOOD'S Case. PART II.

(a) Moor 148.  
8 And. 129.

(b) 11 Co. 27.  
9 H. 5. 15. a.  
Br. non est fa-  
ctum 8. Hob. 96.

(c) Fits. dures  
20. Statham du-  
res 20. Br. du-  
re: & Manaf-  
se a.

(d) 1 Jones 314.  
Alca 3. a.

(e) Moor 184.

(f) Moor 184.  
2 Rol. 28. 4 Le-  
on. 63. Plowd.  
66. b. 15 E. 4.  
28. b. Hob. 96.  
11 Co. 27. b.  
12 Co. 89.

Matter, be the Plaintiff's Deed, the Jury refer to the Court, &c. And it was adjudged, That it was not the (a) Plaintiff's Deed; and in this Case three Points were resolved: First, That although the Party to whom the Writing is made, or other by his Procurement, doth not read the Writing, but a Stranger of his own Head read it in other Words than in Truth it is, yet it shall not bind the Party who delivereth it; for it is not material who readeth the Writing, so as he who maketh it be a (b) Layman, and being not lettered, be (without any Covin in himself) deceived; and that is proved by the usual Form of Pleading in such Case, that is to say, That he was a Layman, and not learned, and that the Deed was read unto him in other Words, &c. generally, without shewing by whom it was read. And if a Stranger, (c) menace A. to make a Deed to B. A. shall avoid the Deed which he made by such Threats, as well as if B. himself had threatned him, as it is adjudged. 45 E. 3. 6. a. Vid. 39 H. 6. 36. a.

Secondly, That (d) such Layman, not learned, is not bound to deliver the Deed, if there be not one present which can read the Deed unto him in such Language that he who should make the Deed may understand it; and that is the Reason, that if it be read to him in other Words than are contained in the Writing, it shall not bind the Party who delivereth it, for it is at the Peril of the Party to whom the Writing is made, that the true Effect and Purport of the Writing be declared, if it be required; (e) but if the Party who should deliver the Deed, doth not require it, he shall be bound by the Deed, although it be penned against his Meaning.

Thirdly, Although the Writing be not read to the Party, yet if the Effect be declared to him in other (f) Form than is contained in the Writing, and upon that he deliver it, he shall avoid the Deed; for it is all one in Law to read in other Words, and to declare the Effect thereof in other Manner than is contained in the Writing, if the Party who maketh the Writing (being not learned) desire one to read the Writing to him, and he read it, or declare the Effect thereof to him in other Manner than the Writing doth Purport, it (unless there be Covin betwixt them) shall not bind him.

Tri

# Trin. 27 Reginæ Eliza- bethæ, Rotulo 1354.

## RADFORD,

**A**lias prout patet Termino Paschæ, anno regni dominæ Reginæ nunc 27. Rotul' 1056. continetur sic, Es-  
sex ff. Richardus Barnard de magna Braxsted in com' pred'  
Predman, sum' fuit ad respondendum Johanni Wiseman de  
placito quod reddat ei decem & octo lib. quas ei debet &  
injuste detinet &c. Et unde idem Johannes per Apollinem  
Playne attorn' suum dicit, quod cum quidam Thomas Wise-  
man fuisset seifitus de & in Insula de Osey cum pertin' in  
magna Totham in com' pred' in dominico suo ut de feodo,  
& sic inde seifitus existens, eandem Insulam cum pertin'  
tenuit de domina Regina nunc, ut de manerio suo de East-  
greenwich in com' Kanc' in libero socagio, viz. per fide-  
litatem tantum. idemque Thomas sic inde seifitus existens,  
15 die Octobris, anno regni dominæ Reginæ nunc 19. apud  
magnam Totham pred' dimisit unam medietatem pred' In-  
sulæ pref. Richardo, habend' & occupand' eandem medie-  
tatem cum pertin' eidem Richardo a festo S. Michaelis  
Archangeli tunc ultimo, preterito, usq; finem & terminum  
viginti & unius annorum extunc proxim' sequen' & plenarie  
complend'. Reddendo & solvend' inde annuatim pref. Tho-  
mæ, hered' & assign' suis, triginta & sex libras legalis mo-  
netæ Angliæ, ad duos anni terminos, viz. ad festa Na-  
tivitatis S. Joh. Baptistæ, & natalis d'ni per equales por-  
ciones solvend', virtute cujus dimissionis præd' Richar-  
dus in medietat' prædict' cum pertin' intravit & fuit  
& adhuc est inde possessionat', Et sic inde possessionat'  
existen', ac prædict' Thoma de reversione ejusd' medie-  
tatis ut de feodo & jure ac de altero medietate Insulæ  
præd' in dominico suo ut de feodo seifit' existen', Idem  
Thomas habuit exitum Williel' filium & hered' suum ap-  
parentem, & prædictus Willihelmus habuit exitum Johan-  
nem

nem filium & hered' suum apparen', & postea predict' Willihelmus apud magnam Totham pred' obiit, predictoque Thomas de reversione unius medietatis Insulæ pred' ac de altera medietate ejusdem Insulæ cum pertin' in forma pred' seifito existen', idem Tho' sic inde seifitus existen', vicesimo die Novembris, anno Regni dominæ Reginæ nunc vicesimo tertio, apud magnam Totham pred' condidit testamentum & ultimam voluntatem sua in scriptis, & per eadem voluit & legavit cuidam Tho. Wiseman filio suo, pred' reversionem pred' unius medietatis Insulæ pred', ac alteram medietatem ejusd' Insulæ: habend' sibi & heredibus masculis de corpore suo legitime procreat', & pro defectu talis exit', remanere inde rectis heredibus ipsius Thomæ Wiseman patris imperpetuum. Ac postea idem Thomas Wiseman pater apud magnam Totham pred' obiit de talibus stat' suis pred' de pred' reversione unius medietatis Insulæ pred', ac de & in pred' altera medietate ejusdem Insulæ cum pertin' seifitus, post cujus mortem pred' Thomas Wiseman filius in unam medietatem Insulæ pred' intravit, & fuit inde seifitus in dominico suo ut de feodo talliat', ac seifitus de pred' reversione alterius medietatis ejusdem Insulæ ut de feodo talliat', videlicet sibi & heredibus masculis de corpore suo legitime procreat', reversione inde pred' Johanni, ut consanguineo & hered' pred' Tho. Wiseman patris spectanti, videlicet ut filio & heredi Willihelmi Wiseman defunct', filii & heredis pred' Tho. patris: predictoq; Tho. Wiseman filio sic inde seifit' existen', ac pred' Johanne consanguineo & hered' predicti Thomæ patris de reversione inde ut de feodo & jure seifit' existen', idem Johannes sexto die Maii, ann' regni dominæ Reginæ nunc vicesimo quarto apud magnam Totham pred' per quamdam indenturam suam, geren' dat' eisdem die & anno, fact' inter ipsum Johannem Wiseman per nomen Johan' Wiseman interioris Templi London' generosi, consanguinei & proximi hered' Th. Wiseman nuper de Northend' infra parochiam de Mutchwalthum in com' Essex Armigeri defunct' ex una parte, Et quosdam Antonium Everard, Johannem Mead, & Johannem Sorrel, per nomina Antonii Everard de interiori Templo London' Generosi, Johannis Mead de magna Easton in com' Essex, Generosi, & Johannis Sorrel de Styfled in pred' Com' Essex, Generosi, ex altera parte, ac in Cur' ipsius dominæ Reginæ nunc ad placita coram ipsa Regina tenend' infra sex menses tunc proxim' sequen' secundum formam statuti in hujusmodi casu nuper edit' & provis. debito modo de recordo irrotulat'. Et cujus alteram partem sigillis ipsorum Antonii, Joh. Mead & Joh. Sorrel signat', idem Johannes Wiseman hic in Curia profert, cujus dat' est eodem sexto die Maii, anno vicesimo quarto supradicto, testan' quod



pred' Johannes Wiseman tam in consideratione, & ad intention' quod omnia & omnimod' maneria, mesuagia, terras, tenement' & hereditamenta, cum omnibus & singulis pertin' deberent & possint imperpetuum imposter' continuare, remanere, & esse, ad voluntatem & bene placitum Dei, in genere, nomine, sive sanguine ipsius Joh. Wiseman, quam pro diversis aliis bonis considerationib' ipsum Joh. Wiseman tunc specialiter moventibus, convenisset, & concessisset, pro seipso, heredibus execut' administrat' & assignat' suis, ad & cum pref. Antonio Everard, Joh. Mead, & Joh. Sorrel, hered' executoribus & administratoribus suis, & hered' execut' & administratoribus cujuslibet eorum per eandem Indenturam, quod ipse idem J. Wiseman hered' & assign' sui, deberent, & voluissent immediate extunc imposterum stare, & esse seiscit', de & in reversione & reversionibus remanere & remaneribus omnium & singulorum maner' terrar' tenement' & hereditament' preantea mentionat' ad usum ipsius J. Wiseman & hered' masculor' de corpore suo legitime procreator', & pro defectu talis exit' ad usum W. Wiseman fratris ejusdem J. Wiseman, & heredum masculorum de corpore ipsius Wilhelmi legitime procreatorum, & pro defectu talis exitus ab usum T. Wiseman alteri' fratris ipsius Joh. Wiseman, & heredum masculorum de corpore ipsius Thomæ legitime procreatorum, & pro defectu talis exitus ad usum hered' de corpore Willihelmi Wiseman patris ipsius Johannis Wiseman, & heredum de corporibus eorum legitime procreatorum, & pro defectu talis exitus ad usum hered' de corpore pred' T. Wiseman defunct', & heredum de corporibus eorum legitime procreatorum, & pro defectu talis exitus ad usum dominæ Reginæ nunc, & hered' & successor' dictæ dominæ Reginæ Regum & Reginarum hujus regni Ang. imperpetuum, prout per eandem Indenturam inter alia plenius liquet & apararet, virtute cujus quidem Indenturæ, ac vigore cujusdam Actus in Parlamento dominæ H. nuper Regis Ang. 8. apud West. in comitatu Midd' 4. die Februarii, anno regni sui 27. de usibus in possessionem transferend' tunc tent', edit', idem Johannes Wiseman fuit seiscit' de reversione totius Insulæ pred' ut de feod' talliat' & jure, Et pro defect' talis exitus remanere inde pref. Willihelmo Wiseman fratri ejusdem Johannis Wiseman, & hered' masculis de corpore ipsius Wilhelmi legitime procreatis, Et pro defectu talis exit' ad usum pred' Thomæ Wiseman alterius fratris pred' Johannis Wiseman & hered' masculorum de corpore ipsius Thomæ legitime procreatorum, Et pro defectu talis exitus remanere inde hered' de corpore pred' Willihelmi Wiseman patris & hered' de corporibus eorum legitime procreand': Et pro defectu talis exitus

remanere inde hered' de corpore predict' Tho. Wiseman defuncti & hered' de corporibus eorum legitime procreand'; Et pro defect' talis exitus remanere inde dic' dom' Reg. nunc heredibus & successoribus Reg. & Reginis hujus regni Ang. spectan'. Predictoque Joh. de pred' Reversione totius Insulæ pred' ut de feodo talliat' & jure in forma pred' seifit' existen' remanere inde ulterius in forma pred' spectan', pred' T. Wiseman filius, postea, sc. 15. die Julii, anno regni dictæ dominæ Reginæ nunc 26. apud magnam Totham pred' obiit sine herede masculo de corpore suo legitime procreat', post cujus mortem idem Johannes in unam medietatem Insulæ pred' cum pertin' intravit, & fuit & adhuc est seifitus in dominico suo ut de feodo talliato, ac similiter idem Johannes fuit & adhuc seifitus existit de pred' reversione alterius medietatis ejusdem Insulæ ut de feodo talliato & jure; Et sic inde seifito existen', ac pred' Richardo de eadem altera medietate ejusdem Insulæ cum pertin' in forma pred' possessionat' existen', pred' decem & octo libræ de redditu pred' pro dimid' unius anni finit' ad festum natalis domini, anno regni dominæ Reginæ nunc 27. eidem Joh. aretro fuerunt & adhuc existunt non solut', per quod actio accrevit eidem Johanni, ad exigend' & habend' de pref. Richardo pred' decem & octo libras pred' tamen Ric. licet sepius requisit', pred' decem & octo libras eidem Joh. nondum reddidit, sed ill' ei hucusq; reddere contradixit, & adhuc contradic'; unde dic' quod deteriorat' est, & dampnum habet ad valentiam xx. li. Et inde produc' sectam, &c. Et pred' R. Barnard per J. Cooke attornatum suum, venit & defendit vim & injuriam quando &c. Et dicit quod pred' Johannes Wiseman actionem suam pred' versus eum habere non debet, quia dicit quod bene & verum est, quod pred' Thomas Wiseman pater fuit seifitus de Insula pred' cum pertinentiis in dominico suo ut de feodo, ac quod idem Thomas dimisit eidem Richardo Barnard medietatem Insulæ pred' cum pertinentiis, ac quod pred' Thom' Wiseman pater per pred' testamentum ut ultimam voluntatem suam voluit & legavit pref. Thom' Wiseman, filio, pred' reversionem pred' unius medietatis Insulæ pred', ac alteram medietatem ejusdem Insulæ in forma pred'; ac quod pred' Thomas Wiseman filius virtute legationis illius, fuit seifitus de una medietate Insulæ pred' in dominico suo ut de feodo talliato, videlicet sibi & heredibus masculis de corpore suo legitime procreat', ac de reversione alterius medietatis inde in dominico suo ut de feodo talliato & jure, videlicet sibi & hered' masculis de corpore suo legitime procreat', prout pred' Joh. Wiseman per narrationem suam pred' superius suppon', Sed idem Ric. Barnard ulterius



ulterius dicit quod pred' Thoma Wiseman filio de una medietate Insulae pred', ac de reversione alterius medietatis inde in forma pred' seifito existen', quidam Joh. Godfrey ix. die Junii, anno regni dictae dominae Reginae nunc 26. prosecut' fuit extra Cur' Cancellariae dictae dominae Reginae nunc in eadem Cur' Cancellariae apud Westmonasterium predict' tunc existen', quoddam breve dictae dominae Reginae de Ingressu super disseisinam in le Post versus praef. Thomam Wiseman filium, per nomen Thomae Wiseman, Generosi, de Insula pred' cum pertin' inter alia tunc Vic' pred' Com' Essex directum, per quod quidem breve dicta domina Regina nunc eidem tunc Vicecomiti praecipit, quod idem tunc Vicecomes praeciperet, praef. Thomae Wiseman filio, quod iuste & sine dilatione redderet praef. Joh. Godfrey Insulam pred' cum pertinen', inter alia per nomen manerii de Mockinghall cum pertinen' ac viginti & duorum mesuagiorum, trium columbar', viginti & duorum gardinorum, quadringentarum & triginta acrarum ter', centum sexaginta & duarum acrarum prati, quadragintarum & sexaginta acrarum pasturae, viginti & duarum acrarum bosci, centum & decem acrarum jimpnorum & bruar', decem acrarum morae, quadringentarum acrarum marisci, & quinquaginta solidat' reddit' cum pertinen' in Barlinge magna, Stanbrigge magna, Wakering parva, Wakeringe, Leighe, Shoplande, Rochford, Pittelwel, Benifleet, Fowlnes, Althorp, Thundersley, Hadley, Baddowe magna, Totham magna, & Gouldhauger, quae clam' fuisse jus & hereditatem suam: Et in qua idem T. Wiseman tunc non habuit ingressum nisi post disseisinam quam Hugo Hunt inde injuste & sine iudicio fecisset praef. J. Godfrey infra 30. annos tunc ultimos elapsos ut tunc dixit. Et unde tunc querebatur quod pred' T. Wiseman filius ei tunc deforc': Et nisi fecisset, Et pred' Joh. Godfrey tunc fecisset ipsum tunc vic' secur' de clamore suo prosequendo, tunc summon' per bonos summon' pred' T. Wiseman filium quod esset coram Justic' dictae dominae Reginae hic, sc. apud Westm' pred' a die S. Trinitatis in xv. dies tunc proxim' sequen', ostens. quare non fecisset. Et quod idem tunc Vic' haberet tunc ibi summon' & breve illud. Ad quam quid' quindenam S. Trinitatis coram Edmundo Anderson milite, & sociis suis tunc Justic' dictae dom. Reginae nunc de banco, hic venit tam pred' Joh. Godfrey, quam pred' T. Wiseman filius in propriis personis suis; Et T. Lucas miles tunc vic' pred' com' Essex retorn' tunc hic breve pred' sibi in forma pred' directum, in omnibus servit' & executum; viz. quod predictus Joh. Godfrey invenisset eidem tunc vic' pleg.



pleg. de prof. breve suum predictum, sc. Jo. Doo, & R. Roo: Et quod predictus T. Wiseman filius summonit' fuit per Johannem Den, & R. Fen: Super quo pred' Johannes Godfrey in propria persona sua in eadem curia hic narrando super brevi suo predicto, tunc petiit vers. predictum Thomam Wiseman filium, Manerium, Tenementa, & reddit' predicta cum pertinentiis, ut jus & hereditatem suam; Et in que idem Thomas tunc non habuit Ingressum, nisi post disseisinam quam Hugo Hunt inde injuste & sine judicio fecit pref. Joh. infra triginta annos tunc ultimos elapsos. Et unde tunc dixit quod ipsemet fuit seisisus de Manerio, Tenementis, & reddit' predictis cum pertinentiis, in dominico suo ut de feodo & jure, tempore pacis, tempore dominæ Reginæ nunc capiendo inde explef. ad valenciam, &c. Et in que, &c. Et inde tunc produxit sectam, &c. Et pred' Th. Wiseman filius in propria persona sua tunc defend' jus suum quando, &c. Et voc' inde ad warr' David. Howell, qui tunc presens fuit in eadem curia in propria persona sua, & gratis manerium, tenementa, & reddit' predicta cum pertinentiis ei tunc warr', super quo pred' J. Godfrey tunc petiit vers. ipsum David, tunc tenen' per warr' suam manerium, tenementa, & reddit' predicta cum pertin' in forma pred', &c. Et unde tunc dixit quod ipsemet fuit seisisus de manerio, tenementis, & redd' pred' cum pertinentiis, in dominico suo ut de feodo, & jure, tempore pacis tempore domine reg. nunc capiendo inde explef. ad valentiam, &c. & in que, &c. Et inde tunc produxit sect', &c. Et pred' D. Howell tenens per warr' suam tunc defend' jus suum quando, &c. Et tunc dixit quod pred' Hugo non disseisivit pref. J. Godfrey de manerio, tenementis, & redd' pred' cum pertinen', prout idem Joh. per breve & narrationem sua pred' tunc superius suppon': Et de hoc tunc posuit se super patriam. Et pred' J. Godfrey tunc petiit licentiam inde interloquendi: Et tunc habuit, &c. Et idem Joh. reveniebat in ead' curia illo eod' termino in propria persona sua, Et pred' David licet tunc solemniter exact' fuit tunc non reveniebat, sed in contempt' cur' tunc recessit & default' fecit, per quod tunc concess. fuit in ead' curia, quod pred' J. Godfrey recuperet seisinam suam versus pref. T. Wiseman filium de manerio, tenementis, & redd' pred' cum pertinentiis. Et quod idem Thomas haberet de terra pred' David' ad valenciam, &c. Et quod idem David tunc esset in misericordia, &c. Super quo pred' Johannes Godfrey tunc petiit breve dicte domine regine vit' Com' pred' dirigend' de habere faciend' ei plenariam seisinam de manerio, tenementis,

tenementis, & reddit' pred' cum pertinentiis; Et quod ei  
 tunc concessum fuit retornabile hic indilate, &c. Et po-  
 stea scilicet octavo die Julii illo eodem Termino, venit in  
 eodem curia pred' Johannes Godfrey in propria persona  
 sua: Et pred' Thomas Lucas tunc vic' Com' Essex tunc hic  
 mand', quod ipse virtute brevis illius sibi direct' quarto  
 die Julii tunc ultimo preterito, habere fec' pref. Johanni  
 Godfrey, plenariam seisinam de manerio tenementis & red-  
 dit' pred' cum pertinentiis, prout per breve illud sibi pre-  
 ceptum fuit, que quidem recuperatio & executio superin-  
 de in forma pred' prosecuta & habita fuit ad usum pred'  
 T. Wiseman filii & hered' suorum imperpetuum: Virtute  
 ejus ac vigore ejusdem statuti in Parlamento domini H.  
 nuper regis Ang. octavi apud West' pred', quarto die Fe-  
 bruarii, anno regni sui vicesimo septimo de usibus in pos-  
 sessionem transferend' tent', edit, & provis. idem T. Wise-  
 man filius fuit seisitus de pred' reversione unius medie-  
 tatis Insule pred' cum pertinentiis inter alia, in domi-  
 nio suo ut de feodo & jure; Et sic inde seisitus existens  
 apud magnam Totham pred' obiit de tali statu suo inde  
 seisitus, post cujus mortem pred' reversio unius medietatis  
 Insule pred' cum pertinentiis inter alia descend' qui-  
 dam Eliz. modo uxori Richardi Jennins, & Dorothea  
 Wiseman, ut sororibus & hered' pred' T. Wiseman filii,  
 quae quidem Elizabetha & Dorothea adhuc superstites & in  
 plena vita existunt, videlicet, apud magnam Totham pred'.  
 Et hoc paratus est verificare, unde petit judicium si pred'  
 Johannes Wiseman actionem suam pred' versus eum ha-  
 bere debeat, &c. Et super hoc pred' Johannes Wiseman  
 obtinuit licentiam inde interloquendi hic usque in crastino  
 Trinitatis, Et habet, &c. Idem dies dat' est pref. Ri-  
 chardo hic, &c. Et pred' Johannes Wiseman dic', quod  
 se per aliqua preallegat' ab actione sua pred' habend'  
 excludi non debet, quia dic' quod diu ante recuperatio-  
 nem pred' de tenementis pred' cum pertinentiis in forma  
 pred' habit', per quandam actum in Parlamento domini  
 nuper reg. Ang. 8. patris domine reg. nunc precharis-  
 ti apud West. in com' Midd' 22. die Januarii, anno  
 regni sui 34. inchoat', & ibm' tunc ten't', ac postea per  
 varias prorogationes continuat' usque duodecim diem  
 Julii, anno regni ejusdem nuper regis H. octavi tricesimo  
 quinto tent', edit', inter cetera inactitat' fuit autoritate  
 ejusdem Parlamenti, quod ubi diversi nobilissimorum pro-  
 p'rietor' ejusd' nuper Regis H. 8. & specialit' idem nu-  
 mer Rex precipue liberaliter supra omnes alios dedisset,  
 concessisset, seu aliter providisset ejus vel eorum di-  
 gitis & bonis servientibus & subditis, tam nobilibus quam  
 aliis,

aliis, maneria, mesuagia, terras, tenementa, reddit, servicia, & hereditamenta sibi & hered' masculis de corporibus suis, sive hered' de corporibus suis legitime procreat' intenden', ad tempus talium donor' non solum proferre & exaltare illos donatos voc' **Donees**; verum etiam heredes suos in sanguine de corporibus suis secundum limitationem donor' pred' ad intention' quod recompensatio pro serviciis illorum donatorum voc' **Donees**, potuissent non solum esse beneficium pro personis suis sed sempiternum proficuum & commoditat', ad & pro hered' de corporibus suis provenien', per que tales heredes haberent in spiritali memoria & quotidiana remembranc' proficuum quod ipsi habuissent & acceperunt, per servitium antecessor' suor' fact' regibus hujus regni Ang. & exinde melius excitari ad faciend' consimile servicium, serenissimis dominis suis sicuti debet' allegian' suis pertinent. Et quia diversi tales donat' voc' **Donees** in talliat' & eor' heredes, quotidie ante tempus editionis actus pred' permiserunt per eorum assens. falsas & fictas recuperationes fore habit' versus eos cum communi vocare sive alit' de maneriis, mesuag', terris, tenementis vel hereditamentis, sic dat' concess. sive provis. in talliat' per pred' dominum regem, vel nobiles progenitores suos ut supradict' est, ad intention' per fraudem covinam & medium indebitum non solum obligare & defraudare heredes suos inheretabiles per limitation' talium donorum: verum etiam pred' dominum regem de prerogativa, warda, prima seisinā, & aliis rectis suis ratione cujus questionēs & diversitat' opinionum ante tempus editionis actus pred' surrexerunt, & tempore editionis ejusdem actus, utrum tales fict' & falsae recuperationes vers. tales tenentes in talliato per eorum consensum de terris tenementis vel hereditamentis, de quibus reversionis vel remaner' essent in domino rege ad tempus talium recuperationis vel recuperationum habit' debuissent post mortem tenentis in talliato obligare heredes in talliato vel non, pro plena declaratione ejusd' ac amovere & extinguere deinceps diversitates opinionum in hujusmodi casibus inactitat' fuit per eundem actum, quod nulla talis ficta recuperatio extunc in posterum habend' per assensum partium vers. tales tenentem vel tenentes in talliat', aliquorum terrarum tenementorum vel hereditamentorum quorum reversio vel remanere ad tempus talis recuperationis sic habend' essent in domino rege, obligaret sive concluderent heredes in talliato, utrum aliqua conditio vel vocare forent in aliqua tali ficta recuperatione vel non, sed quod post mortem cujuslibet talis tenentis in talliat' versus quem aliqua talis recuperatio



recuperatio habito foret, heredes in talliato possint intrare, habere, & gaudere terr', tenementa, & hereditamenta sic recuperat', secundum formam doni in talliato, pred' recuperatione sive aliqua alia re sive rebus extunc imposter habend' vel fiend', per vel vers' aliquem talem tenentem in talliat' in contrarium non obstant'. Et ulterius per eundem Actum autoritate ejusdem Parliamenti institut' fuit, quod heres cujuscumque talis tenentis in talliat' vers' quem aliqua talis ficta recuperatio habita foret, nullum caperet advantagium pro aliqua recompensatione in valore versus vocare, nec heredes suos, prout per eundem Actum inter alia plenius liquet & apparet. Et idem Johannes ulterius dicit, quod pred' Thoma sic de pred' una medietate Insulæ pred', ac de reversione alterius medietatis inde in forma pred' seisit' existen', recuperatio predict' in forma pred' per pred' Johannem Godfrey versus prefatum Thomam Wiseman filium habita & execut' fuit contra formam statuti pred', & hoc paratus est verificare, unde petit judicium & debitum suum pred', una cum dampnis suis occasione detentionis debiti illius sibi adjudicari, &c. Et pred' Richardus Barnard dicit quod predictum placitum pred' Johannis Wiseman superius replicando placitat', ac materia in eodem content' minus sufficien' in lege existunt ad ipsum Johannem ad actionem suam predictam versus eundem Richardum habendum manu tenend', quodque ipse ad placitum illud modo & forma predict' placitat' necesse non habet, nec per legem terræ tenetur respondere: Et hoc paratus est verificare, unde pro defectu sufficien' replicationis predicti Johannis in hac parte idem Richardus petit judicium, & quod pred' Johannis ab actione sua pred' versus eum habend' precludat', &c. Et pred' Joh. Wiseman ex quo ipse sufficien' materiam ad actionem suam pred' versus pref. Richardum habend' manutenend' superius replicand' allegavit, quam ipse parat' est verificare, quam quidem materiam pred' Richardus non deducit, nec ad eam aliquammodo respond' sed verificationem illam admittere omnino recusat, ut prius petit judicium & debitum suum pred', una cum dampnis suis occasione detentionis debiti illius sibi adjudicari, &c. Et quia Justiciar' hic se advisare volunt de & super premissis priusquam judicium inde reddant, dies datus est partibus pred' hic usque in Octabis Sancti Michaelis, de audiendo inde judicio suo, eo quod Justiciar' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Johannes Wiseman quam pred' Richardus Barnard per attornatos suos pred', super quo viso pred' placito pred' Johannis Wiseman superius replican' placitat' & per Justic' hic plenius

nius intellectus, videtur eisdem Justic' hic quod placitum  
illud ac materia in eodem content' minus sufficient' in  
lege existunt ad ipsum Joh. actionem suam pred' versus  
pref. Richardum habend' manutenend': Ideo concess. est  
quod pred' Johannes nihil capiat per breve suum pred',  
sed sit in misericordia pro falso clamore suo, Et quod  
pred' Richardum eat inde sine die, &c.

Trin

Trin: 27 Eliz:

In the Common Pleas, Rot. 1354

WISEMAN'S Case.

Between (a) Wiseman Plaintiff, and Bernard Defendant (a) Moor 195.  
in Debt, upon a Lease for Years, the Case was such, 1 Anderl. 140.  
Tenant in Tail of certain Land, the Remainder in Fee;  
in Remainder, by Deed indented and enrolled, in Consideration, and to the Intent, as well that all his Lands and Tenements for ever after should continue and remain in his Family, Name, and Blood, as for other good Considerations, doth covenant, That he himself will stand seized of all his Lands, &c. to the Use of himself, and of the Heirs Males of his Body begotten, and after to the Use of divers of his Brothers in Tail, and for Default of such Issue, to the Use of the Queen, her Heirs and Successors, Kings and Queens of this our Realm; and afterwards the Tenant in Tail in Possession, doth suffer a common Recovery with Voucher; and whether this shall be a Bar to the Issue in Tail, was the Question: And it was adjudged, That the issue in Tail by this Recovery was barred. And in this Case six Points were resolved.

1. That no Use by the said Indenture was raised to the Queen; for the Words, that is to say, for other good Considerations, are too (c) general to raise any Use, it hath been adjudged, without special Averment, that valuable or other good Consideration was given.

(b) Carter 146.  
1 Anderl. 141.  
143. Moor 195.  
(c) 1 Co. 176. a.  
b. 2 Rol. 786.  
Cr. El. 394. Cr.  
Jac. 175. Cart.  
138. 140.  
(d) Cr. Jac. 168.  
Carter 146.

2. The Consideration that the Land shall (d) remain in the Name and Blood, notwithstanding the Use limited to the Queen, is for the Benefit and Preservation of the Estates in Tail, as well against Discontinuances, as against Bars, as it is said, it was resolved to be no Consideration to raise the Use to the Queen, for there wanteth *Quid pro quo*, &c. & *contractus dicitur quasi actus contra actum*.

3. Admitting the Covenantor had said in his Indenture,



ture, In Consideration that the Queen is the Head of the Commonwealth, and hath the Care and Charge as well to preserve the Peace of the Realm, as to repeal foreign Hostility (which is implied in the Word Queen) yet this is not a good Consideration to raise an Use for the Cause aforesaid, for there wanteth *Quid pro quo*, and Kings *ex Officio* ought to govern and preserve the Subjects in Peace and Tranquillity.

4. It was resolved, that admitting the Considerations had been sufficient to raise the Use to the Queen, yet it doth

(a) Moor 115.  
295. 1 Anderf.  
46, 47, 142, 143.  
Cr. Car. 430.  
Plow. 555. 2.  
Yelv. 149. Noy  
132. Co. Lit.  
372. b. 3 Leon.  
57. Postea 52. 2.  
4 Leon. 40. Benl.  
in Kelw. 213.  
2. b. O. Benl. 32.  
Benl. in Ash. 26.  
N. Benl. 223. pl.  
254. 8 Co. 77.  
b.  
(b) 34 & 35 H.  
8. cap. 20. 10  
Co. 37. 2. 1 An-  
derf. 46, 141.  
2 Co. 52. 2. 6  
Co. 55. 2. Hob.  
299. 2 Rol. Rep.  
417.  
(c) 2 Rol. Rep.  
308.

not (a) preserve the Estate Tail in Possession by Force of the Act of (b) 34 H. 8. for no Estate Tail is preserved by the said Act, unless the Estate Tail be created by the King's Letters Patents, or the Estate Tail be by the King's Provision; and not where the Estate Tail is of the Gift or Creation of a common Person without the King's Provision; and the same appeareth fully by the Preamble of the Act.

And note Reader, this Word (c) (such) through the whole Body of the Act which couples it with the Preamble, which extends only to Gifts made by the King or by the King's Provision. And it was no Mischief at the Common Law

(as it appeareth by the Preamble) that the Donees of common Persons should bar their Issues. See the Statute of 32 H. 8. cap. 26. that a Fine levied by Tenant in Tail shall bar his Issue, unless the Estate Tail be created by the King's Letters Patents: And so the Statute of 34 H. 8. doth pre-

serve no Estate, unless it be of the King's Gift, or by the King's Provision. Also the Queen doth not lose any primer Seisin, or Livery, when the Estate Tail is of the Gift of a common Person, as she loseth when her Donees are barred by Recovery, so the Disadvantage to the Queen is not equal, and therefore without Question it shall not be taken by Equity. And in this Case it was said, that if one makes

(d) Co. Lit. 372.

a Gift in Tail, and afterwards the Crown (d) descends to him, this Gift is out of the Statute, for it was made by a Subject. So if the Ancestor of the King who was not King

(e) Co. Lit. 372.

makes a Gift in Tail, and afterwards the (e) Reversion descends to the King, such Gift is out of the said Statute;

for the Words of the Preamble are, *Whereby such Heirs should have in special Memory, &c. the Profit that they have and take by the Service of their Ancestors done to the Kings of this Realm*; By which it appearerh that the Intent of the

Act was not to extend to the Gift of any Ancestor, of the King who was not King. Also there is more Mischief to the Subject in one Case than in the other. For by the Li-

mitation of the Remainder to the King, the Mesnalties of the Subjects are in Suspence, or extinct, by which they lose their Escheats, Wards, Heriots, Reliefs, &c. but no such Mischief is in the King's Gifts. Also by such secret and unknown Limitations of the Remainder to the Queen, Purchasers are deceived, and the Tenant in Tail in Possession deprived

of the Power which the Law giveth unto him to cut off the Remainder, but when the King maketh the Gift in Tail there is no such Mischief.

5. It was resolved, that the true Interpretation of these Words (whereof the (a) Reversion or Remainder at the Time of such Recovery had shall be in the King, &c.) is, where the King createth the Estate Tail by his Letters Patents, reserving the Reversion; or when the King, in Consideration of Money, or of Assurance of other Lands, or for other Consideration, procureth a Subject to make a Gift in Tail to one of his Servants or Subjects, for Recompence of Service or other Consideration, the (b) Remainder to the King; And therefore, where the Preamble of the said Act saith, Where the King, &c. hath given, &c. or otherwise provided to his Servants or Subjects; these Words, (Reversion to the King) in the Body of the Act, have Reference to the Gift of the King mentioned in the Preamble: And these Words, (Remainder to the King) in the Body of the Act, refer to Provision mentioned in the Preamble made by the King, when he procureth a Subject to make the Gift with the Remainder to him, and so the Body of the Act well (c) expounded by the Preamble.

6. It was resolved, that before the Statute of 34 H. 8. a common Recovery did bar (d) the Estate Tail which was created by the King's Letters Patents, whereof the Reversion did continue in the King. And with this Resolution agreeth 33 H. 8. tit. Recovery in Value. 31 Br. and 29 H. 8. 32 Dier. pl. 1.

(a) Co. Lit. 372. b. 8 Co. 771

(b) Co. Lit. 372. b.

(c) 2 Rol. Rep. 410.

(d) Co. Lit. 335. 2. 372. b. 1 And. 171. Raym. 349. 1 Leon. 85. Cro. Car. 430.

Mich.

# Mich. 28 & 29 Eliz.

## In the Common Pleas.

### LANE's Case.

(a) Godb. 101.  
pl. 117. 1 An-  
derson 191. 1 Le-  
on 170. Goldsb.  
24-

(b) Cr. Car. 22.

(c) 1 Leon. 170.

(d) 2 Rol. 182.

(e) 1 Leon 170.

Cr. Car. 513.

528. Cr. Jac. 109.

1 Rol. 524.

2 Rol. 182.

(f) Plowd. 230.

b.

(g) Bridgman 21.

4 Co. 93. b. 9 Co.

30. b. Hardr.

340.

(h) 1 Rol. 524.

Cr. Car. 179. 445.

313. 528. Cr. Jac.

68. Cro. Eliz. 502.

344. 1 Rol. Rep.

106. 1 Sand. 73.

133.

**B**etween (a) *Smith* Plaintiff and *Lane* Defendant in the Common Pleas, the Case in Effect was such: The King seised of a Manor in Fee in the Right of his Crown by his Steward granted Copyhold Lands Parcel of the Manor to one by Copy of Court Roll according to the Custom of the Manor in Fee. And afterwards the King by his Letters Patents under the Exchequer Seal made a Lease of those Lands for 21 Years to another who granted his Term to the Copyholder: And afterwards the Queen the now is, (reciting the said Lease for Years) (b) granted the Reversion in Fee: The Term of 21 Years expired, the Petitioner of the Reversion entred upon the Copyholder, and if his Entry was lawful or not was the Question. And it was adjudg'd that his Entry was (c) lawful. And in this Case three Points were resolv'd unanimously by the whole Court.

1. That although by the Common Law no Grant of any Land by the King is available or pleadable but under the (d) Great Seal of *England*, and although in this Case it was not alledged, That in the Exchequer the common Course of the Court was to make such Leases under the Seal of the Court; yet it was adjudged, that the said Lease under the Exchequer (e) Seal was good, and that by the common Usage of the (f) Court of Exchequer; for the Customs and Courses of every of the King's Courts are a Law, and the Common Law for the Universality thereof doth take Notice of them, and it is not necessary to alledge in Pleading any Usage or Prescription to warrant the same. And so it is holden in *L. 5 E. 4. 1. 4.* *II E. 4. 2. b.* that the Course of a Court is a Law; and in *2 R. 3. 9 b.* it is holden that (h) every Court of *Westminster* ought to take Notice of the Customs of the other Courts.



Courts, (a) otherwise of Courts in patria. And vide 8 H. (a) 1 Rol. 524.  
 6. 34. & Br. Leases 71. where it is said, The Order of the Noy 90. Larch.  
 Exchequer is to make their Leases by this Word (b) Com- 180. b.  
 mittimus such Lands, Habendum, &c. Reddendum such Rent (b) 4 Inst. 112.  
 or Farm, &c. this is a good Lease there by ancient Usage. Hardres 340.

By which it appeareth, that the ancient Usage maketh a Lease to be good and available in Law; and if such Leases should not be good, great Mischief would ensue, for an infinite Number of Leases and Grants under the Exchequer Seal would be otherwise declared void, and a great Number of Grants of Reversions expectant upon Leases under the Exchequer Seal would be also void: For if the King granteth a Reversion where he hath a Possession, his Grant is void. And the Judges in general Cases have great Respect and Consideration that their Judgments shall not impeach the Estates and Inheritances of many Men against ancient and common Approbation. In a Patent of King

Hen. 7. four Letters, viz. (c) H. R. F. H. of the first Words (c) Dyer 345. pl.  
 were left out intending afterwards propter honorem to be 53. 9 Co. 48. a.  
 drawn and limmed with Gold, but the Great Seal was put Sciles 302. Godb.  
 to the Grant leaving out the said Letters. And yet the Patent was adjudged good for the Multitude of Presidents. 415.

Note Reader, In every Commission to make Leases under the Great Seal there is a special Grant, that Leases made by the Commissioners under the Seal of the Exchequer, &c. shall be good, but that was not touch'd in this Case, nor I think it was material; for if the Leases were not good for the Causes aforesaid, certainly the said Clause in the Commission would not remedy it.

2. It was resolved that by the Acceptance of the Term by the Copyholder, the Copyhold Estate was (d) determined, (d) 1 Rol. 510.  
 as well as if the Copyholder had accepted immediately a Cr. Jac. 84.  
 Lease for Years of his Copyhold, as hath been adjudged Noy. 12. Godb.  
 (e) Hide's Case; for it is the same Reason in both Cases, 101. 153. 4 Co.  
 that a Copyhold Interest and Estate for Years of one 31. a. b. Cr. Car.  
 and the same Land cannot stand together in one and the 521. Cr. El. 7.  
 same Person at the same Time, without confounding the Moor 185. Savil  
 the same. Also they are of divers Natures, and therefore they 70. 3 Bullstr. 81.  
 cannot stand together in one and the same Person. 1 Brownlow 32.  
 2 Sid. 140. 1 Anderson. 191. 1 Le-  
 on. 170.  
 (f) 4 Co. 31. b.  
 Moor 185.

3. That the (f) Severance of the Freehold and Inheri- (f) 4 Co. 24. b.  
 tence of the Land holden by Copy of the Manor, hath not 26. b. Hob. 181.  
 distinguished or determined the Copyhold Estate; for not- Cr. Jac. 126. 573.  
 withstanding his Estate is taken but for an Estate (g) at Will, 2 Rol. 510. 8 Co.  
 the Custom hath so established the Copyholder's Estate, that 64. a.  
 is not removeable at the Lord's Will, so long as he performs (g) 4 Co. 21. a.  
 the Customs and Services, and by the same Reason the Lord 24. b. 8 Co. 64. a.  
 can- Lit. Sect. 77. Co.  
 Lit. 60. b. 3 Co.  
 8. a. 6 Co. 37. b.  
 Cr. Car. 45.  
 Metl. 6. 9 Co.  
 105. a. Moor 60.  
 61.

D

cannot determine his Interest by any Act that he can do, and so it hath been adjudged divers Times in the King's Bench: But because the Estate of the Copyholder was determined by the Acceptance of the Lease for Years it was adjudged against the Copyholder.

*Note Reader,* The Law to several Purposes and Intents taketh Notice of divers of the King's Seals. 1. Of the Great Seal. 2. Of the Seal of the Exchequer, as appeareth before. 3. Of the Privy Seal: *F. N. B. 26. b.* The King may grant to one to make (a) Attorney by his Letters Patents under his Privy Seal, and therewith agreeth *37. H. 6. 27. b.* and the King may command under his Privy Seal that one do not go beyond the Sea (b) out of the Realm, as appeareth by *F. N. B. 85. a.* But it is holden in *35. H. 6. a.* that a (c) Protection or Warrant of an Essoin is worth nothing under the Privy Seal. And it appeareth by the Statute de (d) *Articulis super chartas cap. 6.* that no Writ shall be sealed with the Petit Seal.

4. The Law taketh Notice also of the (e) Privy Signet, vide *F. N. B. 85. a.* That the Privy Signet is sufficient to prohibit one to go beyond the Sea. And see a Record in the Exchequer, *Hil. 1 E. 4. ex parte Rememoratoris dom' Regina Rot. (f) 14.* that the Discharge under the Privy Signet of a Debt due by the Sheriff of London was not sufficient, but it ought to have been under the Privy Seal, and then it had been a good Discharge in Law.

Know, Reader, that of small Things (as the Case at Bar was) and to poor Men, Leases have been made under the Exchequer Seal, as appeareth by many old Precedents before and in the Time of King E. 3. and by infinite Precedents after to this Day: And such Leases made according to the said Precedents have been allowed good. And there were three Causes of the Beginning of the Usage. 1. For the Multiplicity, that every poor Man shall not be driven for such infinite Number of Leases to sue for Cottages to the King, and other small Things to pass by the King's signing, the Privy Signet, Privy Seal, or Great Seal. 2. For Necessity, lest if a poor Subject should be driven to such a tedious Suit, the Land would lie many Times without a Tenant to the King's Damage. 3. For the Impossibility, because many Times the Subject was not able, nor the Thing leased of Value to pass the Great Seal. But to you who are Rich, my Advice is to pass your Leases under the Great Seal for that is the sure Way.

(a) 2 Rol. 183.

(b) 2 Rol. 183.

21 Co. 92. a.

Dyer 128. pl. 61.

165. pl. 6. 176.

pl. 30. Moor 675.

2 Inst. 54. Jenk.

Cent. 220.

(c) 2 Rol. 183.

Co. Lit. 131. a.

Br. Protect. 13.

35 H. 6. 2. a.

(d) 2 Inst. 555.

556. Moor 476.

(e) 2 Rol. 183.

21 Co. 92. a.

(f) 2 Rol. 183.

21 Co. 92. Moor

476.

## Paschæ 3 i Reginae Eliz.

Rotulo 1151.

## BROOKER.

Christopherus Marton nuper de Marton in com' præ-Ebor. ff. dict' armiger, attachiat' fuit ad respondend' Anthonio Baldwin, de pl'ito quare vi & armis clausum ipsius Antho. apud Marton fregit, & blada sua ad valentiam decem librar' ib'm nuper crescen' pedibus ambulando conculcavit & consumpsit; Et alia enormia ei intulit, ad grave dampnum ipsius Antho. & contra pacem dominæ reginæ nunc, &c. Et unde idem Anthonius per Robertum Somerscale attornat' suum queritur, quod prædict' Christopherus decimo die Septembris anno regni domini reginæ nunc tricesimo, vi & armis, &c. clausum ipsius Anth. apud Marton fregit, & blada, viz. avenas suas ad valentiam, &c. ib'm nuper crescen' pedibus ambulando conculcavit & consumpsit, & alia enormia, &c. ad grave dampnum, &c. Et contra pacem, &c. unde dicit qd' deteriorat' est, & dampnum habet ad valentiam viginti librarum. Et inde producit sectam, &c. Et prædictus Christopherus per Wilhelmum Burton Attornatum suum, venit & defendit vim & injur' quando, &c. Et quoad venire vi & armis dic' qd' ipse in nullo est inde culpabil', & de hoc p'en se super patriam. Et pred' Anth. similiter. Et quoad resid' transgr' pred' superius fieri supposit', idem Christofer' dic' qd' pred' Anth. actionem suam pred' versus eum habere non debet, quia dicit quod clausum prædict', necnon loci in quibus supponitur transgress. prædict' fieri, sunt & prædicto tempore quo supponitur transgress. prædictam fieri, fuerunt decem acr' terr' vocat' **Bromfield**, cum pertin' in Marton prædicta, que quidem decem acra terræ cum pertin' sunt & prædicto tempore quo, &c. fuer', solum & liberum tenementum ipsius Christoferi, per quod idem Christoferus

D 2

prædicto



Devant f. 6.

a. 2 Co. 146. 2.

predicto tempore quo, &c. clausum predict', ut clausum ac solum & liberum tenementum ipsius Christoferi propr' in eisdem decem acris terræ cum pertin' fregit, & blada predict' ut blada ipsius Christoferi propr' in eisdem decem acris terræ cum pertin' ut super solo & libero tenemento ipsius Christoferi propr' ib'm tunc crescen' pedibus ambulando conculcavit, & consumpsit, prout ei bene licuit. Et hoc parat' est verificare, unde pet' judic' si prædict' Anthon. action' suam predict' versus eum habere debeat, &c. Et predict' Anthon. dicit quod ipse per aliqua prealligat' ab actione sua predict' habendum precludi non debet, quia dic' quod clausum predict' necnon loci in quibus transgress. predict' unde ipse superius se modo queritur fact' fuit, sunt, & predict' tempore transgress. predict' fact' fuerunt quatuor acris terræ cum pertin' voc' **Scarhil set, and Wattersey myer** in Marton predict', alias quam predict' decem acra terræ voc' **Bromfield**, cum pertin', in barr' predict' Christof. superius spec'. Et hoc parat' est verificare, unde ex quo predict' Christof. ad transgress. predict' in predictis 4. acris terræ cum pertinen' superius de novo assign' fact' superius non respondend' idem Anthon. pet' judic' & dampna sua occasione transgress. illius sibi adjudicari, &c. Et predict' Christof. quoad aliquam transgress. in predict' 4. acris terræ cum pertin' de novo assign' superius fieri supponit, dic' quod ipse in nullo est inde culpabilis, prout predict' Anthon. superius versus eum querit, & de hoc ponit se super patriam. Et predict' Anthon. similiter. Ideo precept' est vic' quod venire fac' hic in crastino sanctæ Trinit' xii. &c. per quos, &c. Et qui nec, &c. Ad recogn', &c. Quia tam, &c. Ad quam diem hic ven' patres, &c. Et vic' non misit breve, Ideo sicut prius prec' est vic', quod venire fac' hic a die sanct. Trin. in tres septimanas xii. &c. Ad recogn' in form' predict', &c. Ad quem diem Jur' inter partes predict' de predict' pl'ito posit' fuit inter eas in respect' hic usq; ad hunc diem, scil. in octab. sanct. Mich. tunc proxim' sequen', nisi Justic' dominæ reg. ad assisas in com' predict' capiend' assign' per form' statui, &c. die Lunæ 14. die Julii prox' preterit', apud Castrum Ebor' in com' predict' prius venissent. Et modo hic ad hunc diem ven' tam predict' Anthon. quam predict' Christ' per attornatos suos predict' & prefat' Justic' ad assisas coram quibus, &c. mis. hic recordum suum in hæc verba. Postea die & loco infra content' coram Joh. Clench uno Justic' dominæ reg. ad plit' coram ipsa Regina tenend' assign', & Thom. Walmesley uno Justic' ipsius dom' Regine de banco Justic' dictæ dominæ Regine ad assisas in com' Eborum capiend' assign' per form' stat', &c. ven' tam infranominat' Anthon. Baldwin, quam infra script' Christo Marton per attornatum suum infra content'

tent', & Jur' Jurat' unde infra fit mentio exact' quidam eo-  
 rum, videl't, Willihelmus Wharton de Dunkeswick gen',  
 Adam Wyre de Ayrton Yeoman, J. Browne de Pathorne  
 Yeoman, Radulphus Walker de Bolton gen', Thom' Pre-  
 ston de Whengille Yeoman, & Hen. Laycocke de Felliface  
 Yeoman, ven', & in Jur' predict' jurat' existunt: Et quia  
 resid' Jur' ejusdem jurat' non comperuer', ideo alii de cir-  
 cumstantib' per vic' com' predict' ad hoc elect' ad requisitio-  
 nem, predict' Anthonii, ac per mandat' Justic' predict' de  
 novo apponunt: Quorum nomina panell' infrascript'  
 affilant' secundum formam statut' in hujusmodi casu edit'  
 & provis'. Ac Jurat' sic de novo apposit' modo comparen',  
 viz. Gabriel Greene, W. Newby, J. Hawton, J. Brorey,  
 J. Craven, & W. Richardson, ven', qui ad veritatem de  
 infracentent' simul cum aliis Jurat' predict' primo impa-  
 nellat' & jurat' dicend' electi, triati, & jurati, dicunt super  
 sacramentum suum, quod diu ante infrascriptum temp'  
 quo supponitur transgressi. infrascript' fieri, predict' quatuor  
 acrae terrae cum pertinentiis in quibus, &c. fuerunt parcellae  
 possessionum nuper Monasterii sive priorat' de Balton in  
 Craven; Quod quidem Richardus nuper Prior priorat' sive  
 Monaster' predict' fuit seisit' de uno tenemento, mesuagio, sive  
 firma voc' *Angthorpe* in parochia de Marton in Craven  
 unde infrascript' 4. acrae terrae cum pertin' interius de  
 novo assign' sunt, & infrascript' tempore quo, &c. fuerunt  
 parcell', in dominico suo ut de feodo, in jure Monaster'  
 sui predict', Et sic inde seisit' existen' idem nuper prior  
 cum assensu ejusdem loci convent', 26. die Decembris,  
 anno regni domini Henrici nuper Regis Angliae octavi  
 vicesimo quinto, per quandam Indenturam sigillo commu-  
 ni predict' Prioris & convent' sigillat', eisdem Jurat' in  
 eiden' ostens'. dimiser' predict' tenementum, mesuagium, &  
 firmam, unde infrascript' quatuor acrae terrae cum pertin'  
 tunc fuerunt & adhuc sunt parcell', cuidam Hugoni  
 Baldwin & Agneti uxori ejus; Habendum & tenendum  
 eidem Hugoni & assign' suis, a dat' Indentur' predict' usq;  
 ad finem & terminum trigint' & unius annorum plenar'  
 complend': virtute cujus dimissionis, iidem Hugo & Agnes  
 predict' quatuor acras terrae cum pertin' in quibus, &c.  
 traver' & fuer' inde possessionat', reversione inde pref.  
 Priori & successoribus suis: predictisq; Hugone & Agnet'  
 de predict' quatuor acrae terrae cum pertin' in quibus, &c.  
 termino predict' possessionat' existen' reversione inde  
 pref. nuper Priori in forma predict' spectan', per quandam  
 statum in Parlamento ipsius nuper Regis H. octavi apud  
 West. in com' Midd' 28. die Aprilis, anno regni sui tri-  
 gesimo primo inchoat', & continuat' usq; vicesimum octa-  
 vim diem Junii tunc proxim' sequen', & ibidem tunc  
 tent',



## BALDWIN'S Case. PART II.

tent', inter alia ordinat' & stabilit' existit per ipsum nuper Regem & dominos spiritual' & temporal', ac communitatem in eodem Parlamento tunc assemblat', quod idem nuper Rex haberet, teneret, possideret, & gauderet sibi, hered', & successoribus suis, omnia & singula talia nuper Monasteria, Abbathias, Priorat', domos monal', Collegia, & Hospitalia, domos firm', ac alios ecclesiasticos & religiosos domus & locos quorumcunq; gener', naturar', qualitat', si-  
 ve diversitat' ornamentor' regul', profession', seu ordinum, ill' vel eor' aliquod essent nominat', cognit', seu vocat', quæ post 4. diem Februarii, anno regni predict' nuper regis 27. fuisset dissolut' suppress. renunciat', relict', forisfact', fursum reddit' aut aliquo modo devent' regie celsitudinis, & per eandem auctoritat', & in consimili modo haberet, teneret, possideret, & gauderet omnia scitus, circuitus, procinct', maneria, dominia, grangia, mesuagia, terr', tenementa, prata, pastur', reddit', reversiones, servitia, boscos, decimas, pensiones, porciones, rectorias appropriat', vicarias, ecclesias, capell', advocaciones, nominationes, pr'onat', annuitates, jura, interesse, intrationes, conditiones, co'inas, letas, cur', libert', privilegia, franchises, ac alia quæcunq; hereditamenta quæ pertinuerunt seu spectaverunt predict' nuper Monasteriis, Abbathiis, Priorat', domib' monal', collegiis, domib' firm', ac aliis religiosis & ecclesiasticis domib' & locis, aut eor' alicui, in tam largis & amplis modo & forma, prout nuper abbas, priores, abbissæ, priorissæ, ac alii ecclesiastici gubernatores vel gubernatrices ib'm nuper monaster', abbat', priorat' domorum, si-ve locor' ad tempus predict' dissolutionis, suppressionis, renunciationis, forisfact', fursum redditionis, vel aliquo alio modo devent' eorund' ad regiam celsitudin' post 4. diem Feb. supraspec'. Et ulterius inactitat' existit auctoritate predict', quod non solum omnia predict' nuper monasteria, abb' priorat' domos monal', collegia, hospital', domos firm', ac religiosi & ecclesiastici domos, & loci scitus, circuit', procinctus, man'ia, dominia, grang', mesuag' terr', ten'ta, prata, past', redd', reversiones, servitia, & omnia alia premissa abinde immediate prosecut': sed etiam omnia alia monaster', abb' priorat', domos monal', collegia, hospitalia, domos firm', ac omnia alii religiosi & ecclesiastici dom' & loci qui imposterum contingerent dissolvi, supprimi, renunciari, relinqui, forisfact' fieri, fursum reddi, aut per aliquem alium medium devenire regie celsitudini: Ac etiam omnia scitus, circuitus, procinct', maneria, grang' mesuag' terr', ten'ta, prata, pastur', reddit', reversiones, servitia, bosci, decimæ, pensiones, portiones, rectoriæ appropriat', vicarie ecclesiæ, capellæ, advocaciones, nominat', patronat', annuitates, jura, interesse, intrationes, conditiones, communia, let', cur', libertates, privilegia



privilegia, franchesiz, ac alia hereditamenta quæcunq; fuerunt spectant sive pertinet eisdem, aut eorum alicui quando-  
cunq; & tam ut essent sic dissolut' suppressa renunciat' relict'  
forisfact' fuit per aliquem aliud medium devent' Regiæ  
celsitudini essent vestit' & adjudicat', autoritate ejusdem  
Parliamenti in vera actuali & reali seifina & possessione  
ejusdem nuper Regis, hered' & successor' suorum imper-  
petuum, in statu & conditione quæ adtunc fuerunt, & quem-  
admodum omnia predict' Monasteria, Abbathia, priorat',  
domos monal', collegia & hospitalia domos firm', ac omnes  
alii religiosi & ecclesiastici domus & loci sic dissolut', sup-  
pressa, renunciat', relict', forisfact', sursum reddit', aut de-  
vent' regiæ celsitudini, ut predict' existit, quam etiam pred'  
Monasteria, Abbathia, Priorat', domus monalium, collegia,  
hospitalia, domus firm', ac alii religiosi & ecclesiastici dom'  
& loci quæ tunc impostum contingerent fore dissolut',  
suppressa, renunciat' relict', forisfact', sursum reddit', vel  
devent' regiæ celsitudini, scitus circuitus, procinctus, mane-  
ria, dominia, grangie, terr', tenementa, ac cetera premissa  
quæcunq; fuerunt in eodem actu specialiter & particulariter  
recitat', nominat', & expressa per expressa verba nomina  
facultatis & suis naturis generalibus & qualitatibus, prout  
in eodem actu inter alia plenius liquet: Et iidem Jur'  
alterius dicunt super se'rum suum quod predict' Monasterium  
sive priorat' de Boulton predict' post predict' quartum diem  
februarii, anno vicesimo septimo supradicto, sc. 11. die  
junii, anno regni ipsius nuper Regis 31. supradict' disso-  
lut' fuit: Pretextu cujus dissolutionis ac vigore statuti pred',  
predict' nuper Rex fuit seifit' de predict' Monasterio sive  
priorat' de Boulton predict', ac de reversione predict' 4. acr'  
terræ cum pertinet inter alia in dominico suo ut de feodo in  
jure coronæ suæ Angliæ. Et quod predict' mesuagia & te-  
nementa vocat' **Wingthorpe**, & predict' quatuor acræ terræ  
cum pertinet in quibus, &c. tempore dissolutionis predict'  
per parcell' possessionum predict' Monasterii sive Priorat':  
idemq; nuper Rex sic inde seifit' existen', tertio die April'  
anno regni sui, tricesimo tertio, per literas suas patentes  
magno sigillo suo Angl' sigillat' Jur' predict' in evidenc'  
stent. dedit & concessit Henrico nuper com' Cumberl' totum  
predict' tenementum, mesuagium, & firmam cum pertinen-  
tiis vocat' **Wingthorpe**, unde infra-script' quatuor acr' terræ  
cum pertinet adiacen' fuer' & adhuc sunt parcell': Habendum  
idem nuper Comiti hered' & assignat' suis imperpetuum:  
quarum quidem literarum paten' prætextu idem nuper  
comes fuit inter alia seifit' de reversione predict' tene-  
menti, mesuagii, ac firmæ cum pertinet, unde predict' 4. acr'  
terræ cum pertinet in quib', &c. tunc fuerunt & adhuc sunt  
parcell' in d'nico suo ut de feodo; predictisq; Hugone &

Agnete pro præd' termino annor' in forma predict' possessionat' existen', reversione inde pref. Comiti & hæredibus suis spectan', predict' Hugo obiit de predict' quatuor acris terræ cum pertin' in quibus, &c. in forma pred' possessionat', ac predict' Agnes ipsum Hugonem supervixit, & fuit de eisdem quatuor acr' terræ cum pertin' in quibus, &c. sola possessionat' per jus accrescend', &c. predictaq; Agnet' sic inde possessionat' existen' reversione inde pref. nuper Comiti in forma predict' spectan', idem nuper Comes fecit, sigillavit, & deliberavit quandam Indenturam ut factum suum de predict' quatuor acris terræ cum pertin' in quibus, &c. inter alia, cujus tenor sequitur in hæc verba.

This Indenture made the x. Day of September, in the Year of our Lord God 1545. and in the 37. Year of the Reign of our Sovereign Lord Henry the 8. by the Grace of God, King of England, France and Ireland, Defender of the Faith, and in the Earth the supreme Head of the Church of Eng. & Irel. Betwixt the Rt. Noble Lord Henry Earl of Cumberland, Lord of thonor of Shipton, Lord Westmorland and Wexham, of the one Party, and Agnes Baldwin of Angthorpe Widow, and Anthony Baldwin on the other Party, witnesseth, That the same Earl for the Sum of lviij l. xiii s. iiii d. Sterling at the Day of the Date hereof by the said Agnes and Anthony paid to the said Earl, whereof the said Earl knowledgeth himself to be truly contented and paid, and the said Agnes and Anthony their Heirs and Executors, thereof, and of every Part thereof to be discharged and acquitted forever, hath covenanted, granted, demised, and letten to Farm, and by these Presents covenanteth, granteth, demiseth, and letteth to Farm to the same Agnes and Anthony, and to the Heirs of the same Anthony, the said Tenement, Mease, or Ferme, called Angthorpe in the Parish of Marton in Craven in the County of Yorke, together with the Closures, Feedings, Pastures, Arable Land, Meadow, Woods, Waters, Common of Pasture in the Woods of East and West Marton, Common of Turbarie, with free Passage to and fro the same Common of Easton, a Ground or Meadow called Todholme, lying in the demean Closes of Marton Hall, and all Houses, Barns, Boons, and Buildings to the same Tenement or Farm called Angthorpe belonging, or in any wise heretofore appertaining, now and of old Time being of the only yearly Rent of liii s. 4 d. To have and to hold the same Tenement or Farm called Angthorpe, with all and

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PART II. *BALDWIN'S Case.*

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and singular the Premises with the Appurtenances, to the same Agnes and Anthony, and to the Heirs of the same Anthony from the Date hereof to the End and Term of 99 Years, next and immediately following, and fully to be compleat and ended, and so from 99 Years to 99 Years, till such Time as 300 Years be spent, fully finished, and expired, without Impeachment of any Manner of Waste, in as ample, free, and large Manner as ever Nicholas Simson, Hugh Baldwin, the said Agnes Baldwin, or any other Tenant or Farmer of the said Tenement or Mese of Angthorpe, with all and singular the Premises with the Appurtenances ever occupied or might have occupied the same, without Impediment, Let, Disturbance, Denial, Contradiction, or Resistance of the same Carl or of his Heirs and Assigns, or of any other Officer, Farmer or Farmers of the same Carls, of the Manor or Capital Mese called Barton Hall for the Time being, or of any other, at or by Will, Assent, Consent, or Sufferance of the same Carl, his Heirs or Assigns; And further, The same Agnes and Anthony covenanteth and granteth by these Presents, for them and for the Heirs of the said Anthony, to and with the same Carl, that they the same Agnes and Anthony, and the Heirs of the same Anthony shall yearly during the said Term at the Feast of St. Michael the Archangel, and within forty Days after, for certain urgent Considerations, content and pay, or cause to be contented and paid to the said Carl his Heirs and Assigns, as well a Penny separately by itself as v. s. iiii. d. in a gross and intire Sum if it be asked, for the which Payment of the said single Penny, and of the said v. s. iiii. d. Sterl. the said Carl covenanteth and granteth for him his Heirs and Assigns, and with the said Agnes and Anthony to discharge and save Harmless from Time to Time all the said Land and Tenements, and the said Agnes and Anthony, and the Heirs of the same Anthony, as well of and for the Payment of the said Penny, as for the Payment of the Sum of v. s. iiii. d. as of all other Rents, Exactions, Boons, Gressoins, Fines, Customs, and all other Impositions or Demands whatsoever they be, concerning the same Mese or Tenement called Angthorpe, and all other the Premises with the Appurtenances, during the said Term now granted, or any Term hereafter by Force of this Indenture to be granted



granted by the Earl and his Heirs, as well against our Sovereign Lord the King and his Heirs, as against all other Person and Persons whatsoever they be. And furthermore the said Earl covenanteth to and with the said Agnes and Anthony by these Presents, that he the said Earl his Heirs and Assigns, shall at the End and Term of 300 Years make and cause to be made to the Heirs or Assigns of the said Anthony a like Dimission and Lease of the said Pease or Tenement and all other the Premises with the Appurtenances if it be asked, for so many more Years as is contained in this Lease, and the same Lease to be of like Force, Effect, and Strength in the Law as this present is without any Cobin, Fraud, Collusion, Deceit, or Male-Engine, but truly and faithfully according to the true Purport and Meaning of these Indentures. In witness whereof the Parties above to these Indentures interchangeably have set their Seals, the Day and Year abovesaid.

Et iidem Jurator ulterius dicunt supra sacrum suum quod nulla liberacio aut seissina tenementorum predicti alicujus inde parcel liberat fuit prefat Agneti & Anthonio sive eorum alteri super Indenturam predictam, quodque predicti Agnes & Anthonius habuerunt & tenuerunt tenement mesuagium & firmam predictam cum pertin' unde predicti quatuor ac' terræ cum pertin' in quibus, &c. sunt & ad tunc fuer' parcel prout lex in hoc casu postulat, iidemq; Agnes & Anthonius sic habentes tenent tenement mesuagium & firmam predictam cum pertin' unde predicti 4. ac' terræ in quibus, &c. sunt & ad tunc fuer' parcel eadem Agnes ultimo die Octobris anno dicte domine Reg. nunc quinto, apud Marton predictam in com' predictam obiit; Ac predicti Anthonius ipsam supervixit, & continuavit possessionem tenement mesuagium & firme predictam cum pertin' unde predicti quatuor acre terre cum pertin' in quibus, &c. sunt parcell' & percipit exitus inde, & habuit, occupavit, & tenuit tenement mesuagium & firmam predictam unde predicti quatuor ac' terræ cum pertin' in quibus, &c. cum pertin' sunt parcel, de tali statu interesse prout lex in hoc casu postulat: ipse que habens occupans, & tenens, tenement mesuagium & firmam predictam unde infrascripti quatuor ac' terræ sunt parcell', predicti Henr' nuper Comes Cumb' obiit habens exitum Georgium modo Com' Cumb' filium & hered' suum. Et idem Georgius Comes Cumb' intravit in tenement predictum, & post sc. decimo septimo die Aprilis anno regni dicte domine Regine nunc vicesimo quarto, seoffavit prefat Christoforam Marton de predicti quatuor ac' terr' cum pertine

in quibus, &c. inter alia, habendum eidem Christofero & hered' suis imperpetuum; Ac quod predict' Antho. tempore confect' feoffamenti predict' ac post feoffament' illud fact' usq; continuavit possessionem tam de predict' quatuor terræ cum pertinentiis, quam de mesuagio & resid' nemement' & firmæ predict': Sed Jurator' tamen ulterius dicunt, quod ante feoffament' predictum predictus reddit' pref. Henr' nuper Comiti Cumb' & hered' suis per Indentur' predict' concess. tam pref. Henr' Comiti Cumb' in vita sua, & post mortem ipsius nuper Comit' predict' Georgio modo Comiti Cumb' quam pref. Christofero Marton post feoffamentum predictum per predict' Anthonium solut' fuit. Et iidem Jurator' ulterius dic' super sacramentum suum, quod predict' Christoferus die & anno in narratione infra script' spec', intravit in predict' quatuor acras terræ cum pertinentiis in quibus, &c. super possessionem predict' Anthonii, ac avenas infra script' ibidem tunc crescen' pedibus ambulando conculcavit & consumpsit prout predict' Anthonius interius versus eum queritur. Sed utrum super tota materia predict' per ipsos Jurator' in forma predict' compert' predict' intracio predict' Christoferi in predict' quatuor acris terræ cum pertinentiis in quibus, &c. sit bona & legitima intracio necne iidem Jurator' penitus ignorant, & petunt inde advisamentum & discretion' Justiciar' & Curie hic. Et si super tota materia predict' per ipsos Jurator' in forma predict' compert' videbitur Justic' & Curie hic quod predict' intracio predict' Christoferi non sit bona & legitima intracio in lege in predict' quatuor acras terræ super possessionem predict' Anthonii, tunc iidem Jurator' dicunt super sacramentum suum quod predict' Christoferus est culpabilis de transgression' in predictis quatuor acris terræ interius de novo assign', prout predict' Anthonius interius versus eum queritur, & tunc assident dampna ipsius Anthonii occasione transgressionis illius ultra mis. & custag' sua per ipsum circa sciam suam in hac parte apposit' ad xx. s. & pro mis. & custag' il' ad quadraginta solidos. Et si super tota materia predict' videbitur Justic' & Curie hic quod predict' intracio predict' Christoferi in predict' quatuor acras terræ interius de novo assignat' super possessionem predict' Anthonii sit bona & legitima intracio in lege, tunc iidem Jurator' dicunt super sacramentum suum quod predict' Christoferus non est culpabilis de transgression' infra script' in infra scriptis quatuor acris terræ interius de novo assign'. Et quia Justic' se advisare volunt, de & super premissis priusquam iudicium inde reddant, dies datus est partibus predict' hic usq; in octabis sancti Hillarii, de audiendo inde iudicio suo, eo quod iidem Justiciar' hic inde nondum, &c. Ad quem

quem diem hic vener' tam predi' Anthonius, quam predi' Christoferus per attornat' suos predi'. Et super hoc visum omnibus & singulis premiffis, & per Justic' hic plenius intellectis, conc' est quod predi' Anthonius recuperet vers' predi' Christoferum dampna sua predi' ad sexaginta solidos per Juratorem predi' in forma predi' assess. necnon undecim libras solidos & octo denarios eidem Anthonio ad requisitionem suam pro misis & custag' suis predi' per Cur' hic de incrementis adjudicat'. Quae quidem dampna in toto se attingunt ad quatuordecim libras sex solidos & octo denarios. Et predi' Christoferus capiat', &c.

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Pas



Pasc. 31 Eliz.

In the Common Pleas, Rotul.

1151.

BALDWIN's Case.

Between *Baldwin* and *Morton* in Trespass in the County of *York*, and adjudged in the Common Pleas, the Case was such; the Prior of *Boulton*, Anno 25 H. 8. with the Assent of his Covenant by Indenture demised the Land in Question to *Hugh Baldwin* and *Anne* his Wife for 21 Years. And afterwards the Prior by Surrender, came to King H. 8. and after *Hugh Baldwin* died, King H. 8. Anno 33. granted the Land in Question to *Henry* of *Cumberland* and his Heirs, who 37 H. 8. by his Indenture covenanted, granted, demised and to Farm let the said Land to the said *Anne*, and to one *Anthony Baldwin* her Son, and to the Heirs of the said *Anthony*: *Holden* to them from the Date of the same Indenture till the End of 99 Years, and so from 99 Years to 99 Years, until 300 Years be expired without Impeachment of Waste in as ample and large Manner and Form as the said *Hugh* and *Anne*, or any Tenant or Farmer ever had enjoyed the same. And the Lessee covenanted to pay for the said Term 5 s. 8 d. if it were demanded: And the Lessor covenanted that he, his Heirs and Assigns, at the End of the said Term of 300 Years, would make unto the Heirs and Assigns of the said *Anthony Baldwin* such Livery and Seisin for other 300 Years, &c. And the Jury found, that Livery and Seisin was made to the said *Anthony* or *Anne* according to the said Indenture; *Anne* died, and *Anthony* survived,

(1) 1 And. 233.  
Owen 40. Palm.  
33. Hardres 149.

vived, Henry Earl of Cumberland died, George his Son and Heir, Anno 14 Eliz. did enfeof the Defendant thereof the said Anthony at the Time of the Feoffment being in Possession of the said Land, upon whom the Defendant entred, upon which Entry the said Anthony Baldwin brought this Action of Trespass. And the Doubt in this Case was, If for as much as the Fee Simple was limited and expressed by the Premises, to Anthony and his Heirs, the Limitation of the Term for Years in the (a) *Habendum* were contrary and repugnant to the Premises. And first it appeareth, That the Intent of the Parties was, that but a Term should pass; for in the Premises the Parties use the usual Words of a Lease, *scil.* grant, demise, and Farm let, and a certain Term for Years is limited by the *Habendum*; also it is limited without (b) Impeachment of Waste; also the Lessee binds himself by Covenant to pay the Rent during the Term; And the Lessor covenanted that a new Lease shall be made at the End of the Term and that the Lessees shall enjoy the Land, &c. as other Farmers, &c. had enjoyed the same. Then such Construction shall be always made, that the (c) Intent of the Parties shall take Effect, if the same by any Construction may stand with the Rule of Law; And it was objected that the Rule of Law was, That an (d) *Habendum* being contrary or repugnant to the Premises is void, and the Premises shall stand: As if a Man by Deed give Lands to the Premises to one and his Heirs, *Habendum* to him for his Life, this *Habendum* is void, because a Fee Simple expressed in the Premises, and but an Estate for Life in the *Habendum*, which is repugnant and void, which Case was agreed on all Sides. But it was adjudged by Anderson Chief Justice, Windham, Periam and Walmsley Justices that the *Habendum* in the Case at Bar was not repugnant and that by the said Demise both the Lessees had a Lease for Years therein expressed; and in this Case these Differences were taken and agreed for good Law.

1. When to Things which take their Essence and Effect by the Delivery of the Deed without other Ceremony, and which lie in Grant, there in such Limitation as in the Case at Bar, the *Habendum* was repugnant and void. As if a Man grant Rent, or Common, &c. out of his Land by the Premises of the Deed to one and his Heirs, *Habendum* to the Grantee for Years or for Life, the *Habendum* is repugnant for a Fee passeth by the Premises by the Delivery of the Deed, and therefore the *Habendum* for Years or Life is void.

(a) 2 Sid. 78.

2 Co. 50. a. 52.

2. 55. a. b. 5 Co.

94. a. b. 8 Co. 56.

b. 93. b. 154. b.

9 Co. 47. a. 48.

2. 10 Co. 107. b.

Co. Lit. 21. a.

2 Rol. 65, 66, 67.

(b) 2 Inst. 146.

4 Co. 63. a. 9 Co.

9. a. 11 Co. 82. b.

83. a. Co. Lit.

220. a. 3 E. 3. 44.

Dyer 10. Pl. 37.

1 Bulst. 136.

Moor. 317.

(c) 1 Co. 85. a.

Co. Lit. 314. b.

Lit. Rep. 187.

(d) Hob. 171.

Cr. El. 255.

Winch. 92.

1. If one by Deed grant a Rent in *esso*, or a Seignory in Premises to one and his Heirs, *Habendum* to the Grantee Years, or Life; although another Thing or Ceremony requisite, that is to say, (Attornment) besides the Delivery of the Deed, yet for as much as the Thing lieth in Grant, and both Estates that is to say, as well the Estate in Fee, as the Estate for Years or for Life ought to have one and the same Ceremony, that is to say, (Attornment) to make it, as a Seignory, &c. and for this Cause the *Habendum* in such Case is repugnant and void.

2. When a Man gives Land by Deed in Fee by the (a) Premises, *Habendum* to the Lessee for Life, there the *Habendum* is void, as hath been said; for one and the same Ceremony, *scil.* Livery is requisite to both the Estates; and therefore when Livery is made according to the Form and Effect of the Deed, it shall be taken strongest against the Feoffor, and more for the Advantage of the Feoffee, and the *Habendum* in such Case is void, and till Livery be made the Feoffee hath but at Will. (a) 13 H. 7. 23.  
b. 24. a. Plow.  
153. a. Perk. S.  
162. Davis 46. a.  
antea 23. b.

3. When to the Estate limited by the Premises a Ceremony is requisite to the Perfection of the Estate, and to the Estate limited by the *Habendum*, nothing is required to the Perfection and Essence thereof but only the Delivery of the Deed, there, although the *Habendum* be of lesser Estate than is mentioned in the Premises, the *Habendum* shall stand, as in the Case at the Bar: To the Fee Simple limited by the Premises, it is requisite to have Livery and Assize; and till Livery be made nothing shall pass but an Estate at Will (if the Deed had not gone further) and therefore the *Habendum* for Years is good presently by the Delivery of the Deed, and so it appeareth it was the Intent of the Party that it should take Effect by the Livery of the Deed for Years.

Note, Reader, a Difference between an Estate in the Premises implied, (b) and an Estate expressed; for if A. (b) Hob. 171.  
8 Co. 154. b.  
Winch 92. Perk.  
S. 167, 174. Co.  
Lit. 183. a. b.  
190. b. Postea  
55. a.  
grant a Rent to B. generally, the same by Implication and Construction of Law is an Estate for Life; but if the *Habendum* be for Years, it is good, and shall qualify the Generality and Implication of the Premises. And note in the Case at Bar, the *Habendum* cannot be good to Anne only, and void to Anthony, for (c) *Maledicta expositio qua corrumpitur textum.* Also it is to be observed, that although Baldwin had an Estate for Years in Possession, and sole and lawful Possession and Anthony nothing, (c) 4 Co. 35. a.  
8 Co. 56. b. 154.  
b. 3 Bulst. 105.  
107, 108. 1 Rol.  
Rep. 315.



s Anderson  
224.

and therefore it might be objected, that this Deed should enure to *Anne* only by Way of Confirmation or Release, yet it was adjudged that the Lease was good to both, *scil.* to *Anthony* and *Anne*, for so are the Words and the Intention of the Parties; and these Words, And to the Heirs of *Anthony*, upon Consideration of the whole Deed are void, and both Lessees had a good Estate for Years. And if Livery of Seisin had been made to the Lessees, it had not altered the Case, for it was a Lease for Years at the Beginning; and Judgment was given for the Plaintiff.

Trin

## Trin. 31 Eliz.

### The Case of BANKRUPTS

Gregory Smith, Cullamor, and other good Merchants of <sup>Moor 594</sup> London, brought an Action upon the Case upon Trover and Conversion of divers Goods in London against Thomas Mills, and upon Not guilty pleaded, the Jury gave a Special Verdict to this Effect: John Cook of Spalding was possessed of the same Goods, and exercising the Trade of Buying and Selling 30 Januarii 29 Eliz. became a Bankrupt, and absented himself *secundum formam Statuti* (which was found at large) and the said 30 Januarii was indebted to the Plaintiffs, being Subjects born, in 273 l. 12 d. *pro Merchandis per quemlibet eorum prius venditis*; and then also was indebted to Rob. Tibnam, being also a Subject born, in 64 l. Afterwards 12 Febr. 29 Eliz. the Plaintiffs exhibited a Petition to the Lord Chancellor to have a Commission upon the Statute <sup>13 El. c. 7</sup> of Bankrupts, and 17 Febr. 29 Eliz. a Commission was granted, according to the said Statute, under the Great Seal, to William Watson and others. And afterwards 21 Febr. 29 Eliz. John Cook gave and delivered the said Goods to Tibnam in Satisfaction of Part of his said due Debt, the Goods being of the Value of 24 l. And afterwards ultimo Martii 29 Eliz. the Commissioners by Deed indented sold to the Plaintiffs jointly the said Goods, and at the same time the said Mills then Factor to Tibnam in *ea parte* refused to come in as Creditor, but claimed the said Goods as the proper Goods of his Master by the Gift aforesaid; and afterwards the Goods came to the Defendant's Hands and he converted them; but whether the Sale of the said Commissioners, notwithstanding the said Gift and Delivery to Tibnam be good or not, that was the Doubt referred to the Consideration of the Court. And Judgment was given by <sup>E</sup> Wray Chief

## The Case of BANKRUPTS. PART II.

Chief Justice, and the whole Court for the Plaintiffs. And in this Case divers Points were resolved :

\* 2 Sider. 272.  
Moor 394. pl.  
305.

(a) 3 Co. 98. b.

(b) 5 Co. 100. 2.  
3 Co. 152. 2.  
3 Co. 123. b.  
Co. Li. 10. a. 43.  
a. 106. b. 174. b.  
271. b.  
(c) 5 Co. 100. 2.  
Bulstr. 15. Br.  
275.  
(d) 5 Co. Lit.  
111. b. 32 H. 8.  
c. 1. 34 H. 8. c. 5.

\* Co. 100. 2.

(e) 4 Co. 37. 2.

(f) 3 Co. 13. 2.  
3 Co. 2. 5 Co. 100. 2.  
Co. Lit. 376. b.  
3 Co. b. Hob. 25.  
3 Bulstr. 318.  
Cr. Jac. 218.  
14 E. 3. Det. 7.  
(g) 3 Co. 13. 2.  
14. 2. Br. Dower.  
58. Satham  
Dower 18. Fitz.  
Voucher 76. Br.  
Voucher. 38.  
(h) 5 Co. 100. 2.

1. That the said \* Sale made by the said Commissioners was good ; and because the Doubt rose only upon the Words and Intent of the Statute of 13 *Eliz. cap. 7.* the Court considered the several Parts and Branches thereof. First, The Act describes a Bankrupt, and whom he defrauds, *scil.* the Creditors. 2. To whom the Creditors should complain for Relief, *scil.* to the Lord Chancellor. 3. How and by what Way Relief and Remedy is provided, *scil.* by Force of a Commission under the Great Seal, &c. 4. The Authority of the Commissioners, *scil.* to sell, &c. that is to say, (a) to every one of the Creditors a Portion, Rate and Rate like according to the Quantity of his or their Debt. So that the Intent of the Makers of the said Act expressed in plain Words was to relieve the Creditors of the Bankrupt equally, and that there should be an equal and rateable Proportion observed in the Distribution of the Bankrupt's Goods amongst the Creditors, having Regard to the Quantity of their several Debts, so that one should not prevent the other, but all should be in *equali jure*. And so we see in divers Cases, as well at the Common Law as upon the like Statutes, such Constructions have been made ; for, as *Cato* saith, (b) *Ipsa etenim leges capiunt ut jure regantur* : And therefore it is held in 35 *H. 8. tit. Testaments, Br. 19.* (c) a Man holdeth three Manors of three several Lords by Knights Service, each Manor of equal Value, he cannot devise two Manors and leave the Third to descend according to the generality of the Words of the Acts of (d) 32 & 34 *H. 8.* of Wills, for then he should prejudice the other two Lords, but by a favourable and equal Construction he can devise but two Parts of each Manor, so that Equality between them shall be observed. And in 4 *E. 3. Assize* \* 178, the Lord of a Town cannot improve it all, leaving sufficient Common in the Lands of other Lords within the Statute of *Merton*, (e) *cap. 4.* And so in Cases at the Common Law an Equality is required, as in 11 *H. 7. 12. b.* (f) a Man binds himself in an Obligation and his Heirs, and hath Heirs and Lands on the Part of his Father, and on the Part of his Mother, both Heirs shall be equally charged, 48 *E. 3. 5. a. b.* in Dower if the (g) Heir be vouched in three several Wards within the same County, he shall not have Execution against one only, but all shall be equally charged. (h) 29 *E. 3. 39.* the like Case. So here in our Case there ought to be an equal Distribution *secundum quantitatem debitorum suorum* but if after the Debtor becomes a Bankrupt, he may prefer one (who peradventure hath least Need) and defraud and Defraud many other poor Men of their true Debts



it would be unequal and unconscionable, and a great Defect in the Law, if after that he hath utterly discredited himself by becoming a Bankrupt, the Law should credit him to make Distribution of his Goods to whom he pleased, being a Bankrupt Man, and of no Credit; but the Law as hath been said before, hath appointed certain Commissioners of Indifferency and Credit to make the Distribution of his Goods, *To every one of his Creditors Rate and Rate like a Portion according to the Quantity of their Debts* as the Statute speaketh. Also the Case is stronger because this Gift is an Assignment of the Bankrupt after the Commission awarded under the Great Seal, which Commission is Matter of Record, whereof every one may take Conusance.

Judg. Resol.  
on the Stat. 1.99.  
130.

Lastly and principally, the Court relied upon other Words in the Act, *scil. And that every Direction, Bargain and Sale, &c. done by the Persons so authorized, as is aforesaid in Form aforesaid, shall be good and effectual in Law, &c. against the said Offender, &c. and against all other Persons claiming by, from, or under such Offender by any Act had, made, or done, after any such Person shall become Bankrupt, &c.* So that in as much as this Assignment and Delivery of the said Goods was after the said Cook became Bankrupt, notwithstanding that, the Commissioners may well sell them. And the Court resolved, that the Proviso concerning Gifts and Grants *bona fide* makes no Gift or Grant good which the Bankrupt makes after he becomes Bankrupt, but excludes them out of the Penalty inflicted by the same Proviso. And divers Exceptions were taken to the Verdict by the Defendant's Council.

Judg. Ref.  
121.

1. That it was not found, that the said Sale by the Commissioners of the said Goods was by Deed inrolled, as they objected the Words of the said Act require: But to that was answered and resolved by the Court, That the Words of the Act concerning Inrolment of the Deed come next after these Words, *Goods and Chattels, are, or otherwise to order the same for true Satisfaction and Payment, &c. and that every Direction, Order, &c. shall be good and effectual to this Sale without Deed inrolled is good enough.*

1 Vent. 360.  
Goodwin Bank.  
118.

Judg. Ref.  
145.

2. It was objected, that it was not found that the Commissioners had first seen the Goods before their Sale, for the Words of the Act are, *scil. to be searched, viewed, &c.* so that it was answered and resolved, that the said Words, *otherwise to order, &c. and that every Direction, &c.* refer to the Discretion of the Commissioners, and peradventure they cannot come to the Sight of them.

3. That the Commissioners ought to make several Contributions to the several Creditors, and not to make a joint Sale or Assignment to several Creditors; for if

Judg. Ref.  
149, 150, 156.  
157.

# The Case of BANKRUPTS. PART II

he owed *A.* 20*l.* *B.* 20*l.* and *C.* 5*l.* a Joint-Sale or Assignment to *A. B.* and *C.* is not according to the Power given to the Commissioners by the said Act; for the Act limits them to make Disposition amongst the Creditors, &c. *every one a Portion Rate and Rate like according to the Quantity of their Debts*; but in this Case he who hath the least Debt shall have as great Interest in the Goods as he who hath the greatest, and so such Assignment in the said Case put of several Debts is void, *quod fuit concessum per Curiam*. But to that it was answered and resolved by the Court that in the Case at the Bar, it appears by the Verdict that the Debt due to the Plaintiffs was joint, for they found *ut supra*, that the said *John Cook* was indebted to the Plaintiffs in 273*l.* 12*d.* which shall be intended Joint-Debt, and so the Sale good in the Case at the Bar.

10d3. Ref. 156,  
257.

(a) 8 Co. 98. b.

4. That for as much as the Words of the Act are, *(a) every of the said Creditors a Portion, Rate and Rate like* Distribution ought to be made to all the Creditors: But here it appears that the said *Tibnam* was a Creditor, and 64*l.* due to him, and yet nothing is allotted or assigned to him, so the Sale is void. To that it was answered and resolved by the Court, that in this Case the Factor of the said *Tibnam* in *ea parte* refused to come in as a Creditor but claimed all the Goods: And this Act gives Benefit to those who will enquire and come in as *(b)* Creditors, and not to those who either out of Obstinacy refuse, or through Carelessness neglect to come before the Commissioners and pray the Benefit of the said Statute; for *(c) vigilantibus et dormientibus jura subveniunt*, for otherwise a Debt might be concealed, or a Creditor might absent himself, and avoid all the Proceedings of the Commissioners by Force of the said Act. And every Creditor may take Notice of the Commission, being Matter *(d)* of Record as is above said; and so no Inconvenience can happen to any Creditor who will be vigilant; but great Inconvenience will follow and the whole Effect of the Act be overthrown, if other Construction should be made.

(b) 8 Co. 98. a.  
Hob. 287. Hutt.  
37, 38. Cr. Jac.  
202.

(c) 4 Co. 10. b.  
82. b.  
2 Inst. 690. 1 Sid.  
55. Palm. 157.

(d) Goodw.  
Bankr. 48.

Pasc

# Paschæ 22 Elizabethæ Reginæ, Rotulo 738.

FILMER,

Thomas Bettisworth sum' fuit ad respond' Johan' Hay-<sup>Essex ff.</sup>  
ward de placito quare cepit averia ipsius Johannis,  
ea injuste detinuit contra vad' & pleg. &c. Et unde idem  
Johannes per Johannem Comber attorn' suum queritur quod  
ed' Thomas vicesimo octavo die Octobris anno regni do-  
minæ Reginæ nunc decimo nono, apud Iping in quodam  
co voc' Raynolds cepit averia, viz. duas vacas ipsius  
Johannis, & ea injuste detinuit contra vad' & pleg. quo-  
que, &c. unde dicit quod deteriorat' est & dampnum  
bet ad valentiam x. l. & inde producit sectam, &c. Et  
ed' Thomas per Johan. Trot attorn' suum ven' & de-  
nd' vim & injur' quando, &c. Et bene advocat captio-  
nem averiorum pred' in pred' loco in quo, &c. Et juste,  
quia dicit quod idem locus in quo supponitur captio-  
nem averiorum pred' fieri continet & pred' tempore cap-  
tis pred' superius fieri supposit' continebat in se unam  
& dimid' terr' cum pertin' in Iping pred', quodque  
ante pred' tempus quo, &c. quidem Johan' Bettisworth  
seisitus de & in uno mesuagio, uno gardino duode-  
cim acris terræ, & una acr' bosci cum pertin' in Iping  
pred' unde predict' locus in quo, &c. est & predict' tem-  
pus quo, &c. necnon a tempore cujus contrarii memoria  
minum non existit fuit parcella, in dominico suo ut de  
do, & sic inde seisitus existens idem Johannes diu an-  
te predict' tempus quo, &c. scilicet vicesimo die Martii  
anno regni dominæ Reginæ nunc undecimo apud Iping  
pred' per quandum Indenturam factam inter prefat' Jo-  
hannem Bettisworth ex una parte, & predict' Johan-  
nem Hayward per nomen Johannis Hayward de eif-  
sa parochia & Com' Husbandman ex altera parte, dis-  
posita, concessit, & ad firm' tradid' pref. Johan' Hayward  
tenement'



## BETTISWORTH's Case. PART II

tenement' predict' cum pertinentiis unde, &c. Habend' & tenend' eadem tenement' cum pertin' unde, &c. eidem Johan' Hayward & assign' suis, a festo Annunciationis beate Mariæ virginis tunc proxim' sequen' usque finem & terminum viginti & unius annorum extunc proxim' sequen' & plenar' complend': Reddend' & solvend' inde annuatim durant' dicto termino pref. Johan' Bettisworth & assign' suis duodecim denarios ad festum sancti Michaelis Archangeli vel infra decem dies proxim' post idem festum; virtute cuius dimissionis idem Johan' Hayward in tenement' pred' cum pertin' intravit & fuit inde possessionat', reversione inde pref. Johan' Bettisworth & hered' suis spectan', ipsoque Johanne Hayward sic de tenementis predict' cum pertinentiis unde, &c. possessionat' existen', ac pred' Johan' Bettisworth de reversione inde ac de reddit' pred' in dominico suo ut de feodo seifit' existen', idem Johan' Bettisworth ante predict' tempus quo, &c. scilicet tertio die Januarii anno regni dominæ Reginæ nunc decimo nono apud Iping predict' obiit de tali statu suo de predict' reversione tenementorum predict' cum pertinentiis unde, &c. ac reddit' predict' seifit' sine herede de corpore suo exeun', post cuius mortem ead' reversione tenementorum predict' cum pertin' unde, &c. descendebat eidem Tho' Bettisworth ut fratri & hered' predict' Johan' Bettisworth, per quod idem Thomas fuit seifit' de predict' reversione tenementorum predict' cum pertin' unde, &c. ac de redditu predict' in dominico suo ut de feodo: Et quia xii. d. de redd' predict' pro uno anno integro post mortem predict' Johan' Bettisworth finit' ad festum Sancti Michaelis Archangeli, anno regni dominæ Reginæ nunc 19. eadem Thom' predict' tempore quo &c. aretro exierunt non solut', idem Thomas bene advocat captionem averiorum predictorum in predicto loco in quo, &c. ut in parcella tenement' predict' cum pertin' pref. Johan' Hayward in forma predict' dimissorum, & iuste, &c. pro pred' xii. d. de reddit' predict' eidem Thomæ sic aretro existen', &c. Et predict' Johan' Hayward dicit quod predict' Thomas ratione prealligat' captionem averiorum predictorum in predict' loco in quo, &c. iustam advocare non debet, quia dicit' quod bene & verum est quod predict' Johan' Bettisworth fuit seifit' de tenementis predict' cum pertin' unde, &c. in dominico suo ut de feodo, & sic inde seifit' existen' dimisit eidem Johan' Hayward tenement' predict' cum pertin' unde, &c. habend' & tenend' eidem Johan. Hayward pro predict' termino predict' viginti & unius annor' prout pred' Thomas superius allegavit: Sed idem Johan' Hayward dicit' quod predict' Johan' Bettisworth de reversione tenement' predict' cum pertin' unde, &c. in dominico suo ut feodo in forma predict' seifit' existen' ante predict' temp' quo, &c.

in tenement' pred' cum pertin' unde, &c. super possessione ipsius Johann' Hayward inde intravit & ipsum Johann' a possessione sua inde expulit & amovit, & immediate postea de eisdem tenement' cum pertin' unde, &c. feoffavit quendam W. Bettisworth, habendam & tenendam eadem tenementa cum pertin' unde, &c. eidem Will' hered' & assign' suis imperpetuum: virtute cujus quidem feoffament' pred' Will' fuit seisit' de eisdem tenementis cum pertin' unde, &c. in dominico suo ut de feodo, super cujus quidem Will' Bettisworth possession' inde idem Johann' Hayward postea & ante pred' tempus quo, &c. clam terminum suum pred' de & in tenementis illis cum pertin' unde, &c. in eadem tenementa cum pertin' unde, &c. reintravit & fuit inde possessionat', & sic inde possessionat' existens idem Johann' Hayward ante pred' tempus quo, &c. posuit averia pred' in predictum locum in quo, &c. ad herbam in eodem tunc crescentem depascend', quae quidem averia fuer' in eodem loco in quo, &c. herbam in eod' tunc crescentem depascend' quousque pred' Thomas die & anno in narratione pred' superius spec' apud Iping predictam in pred' loco voc' Raynolds cepit eadem averia ipsius Johann' Hayward & ea injuste detinuit contra vad' & pleg. quousque, &c. prout ipse superius versus eum queritur, absque hoc quod pred' Johann' Bettisworth obiit de reversione tenementorum pred' cum pertin' unde, &c. Ac de reddit' pred' seisit' prout pred' Thomas super allegavit, & hoc parat' est verificare unde ex quo pred' Thomas captionem averior' pred' in pred' loco in quo, &c. superius cogn' idem Johannes Hayward petit judicium & dampna sua occasione captionis & injuste detentionis averiorum illorum sibi adjudicare, &c. Et pred' Thomas ut prius dic' quod pred' Johann' Bettisworth obiit de reversione tenementorum pred' cum pertin' unde, &c. Ac de reddit' pred' seisit' prout ipse superius allegavit, & de hoc ponit se super patriam, & pred' Johann' Hayward similiter, Ideo prec' est vic' quod ven' fac' hic a die Pasc. in quinque septimanas xii. &c. per quos, &c. Et qui nec, &c. ad recogn', &c. quia tam, &c. ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut pri' prec' est vic' quod ven' fac' hic in crastino S. Trin. xii. &c. ad recogn' in forma pred' &c. Ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut pri' prec' est vic' quod ven' fac' hic in crastino S. Martini xii. &c. Ad recogn' in forma pred', &c. Ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut pri' prec' est vic' quod ven' fac' hic in octabis S. Hill. xii. &c. ad recogn' in forma pred', &c. ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo



sicut pri' prec' est vic' quod ven' fac' hic a die Pasc. in xv. dies, xii. &c. ad recogn' in forma pred', &c. ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut pri' prec' est vic' quod ven' fac' hic in crastino S. Trin. xii. &c. ad recogn' in forma pred', &c. Ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut pri' prec' est vic' quod ven' fac' hic in crastino S. Martini xii. &c. Ad recogn' in forma pred', &c. Ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut pri' prec' est vic' quod ven' fac' in Octabis S. Hillarii xii. &c. ad recogn' in forma pred', &c. ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut pri' prec' est vic' quod ven' fac' hic a die Pasc. in xv. dies xii. &c. ad recogn' in forma pred', &c. ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut pri' prec' est vic' quod ven' fac' hic in crastino S. Trin. xii. &c. ad recogn' in forma pred', &c. ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut pri' prec' est vic' quod ven' fac' hic in crastino S. Martini xii. &c. ad recogn' in forma pred', &c. Ante quem diem loquela pred' adjorn' fuit per breve dominæ Reginæ de communi adjorn' a West. in Com' Midd' usque Castrum Hertford in Com' Hertf. ad quem quidem crastinum S. Martini hic scilicet apud Castrum pred' ven' partes, &c. Et vic' non misit breve, Ideo sicut pri' prec' est vic' quod venire fac' hic in Octabis S. Hillarii xii. &c. ad recogn' in forma pred', &c. Ante quem diem loquela pred' adjorn' fuit per breve dominæ Reginæ de communi adjornam' a pred' Castrum Hertford in Com' Hertf. usque West. pred' in pred' Com' Midd' usque ad eandem Octabis S. Hillarii, &c. ad quem diem hic scilicet apud West. pred' ven' partes, &c. Et vic' non misit breve, Ideo sicut pri' prec' est vic' quod venire faciat hic a die Pasc. in xv. dies xii. &c. ad recogn' in forma predicta, &c. Ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut prius prec' est vic' quod venire faciat hic in crastino S. Trinitatis xii. &c. ad recogn' in forma pred', &c. Ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut prius prec' est vic' quod venire faciat hic in Octabis Sancti Michaelis xii. &c. ad recogn' in forma predicta, &c. Ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut prius prec' est vic' quod venire faciat hic in Octabis Sancti Hillarii xii. &c. ad recogn' in forma predicta, &c. Ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut prius præc' est vic' quod venire faciat hic a die Paschæ in xv. dies xii. &c. ad recogn' in forma predicta, &c. Ad quem diem hic ven' partes, &c. Et vic' non misit breve,



breve, Ideo sicut prius prec' est vic' quod venire fac' hic  
 in crastino sanctæ Trinit' 12. &c. ad recogn' in forma pre-  
 dicta, &c. Ad quem diem hic ven' partes, &c. Et vic' non  
 mis' breve, Ideo sicut prius prec' est vic' quod venire fac'  
 hic in octab. sancti Mich. 12. &c. ad recogn' in forma  
 predicta, &c. Ad quem diem hic ven' partes, &c. Et vic'  
 non mis' breve, Ideo sicut prius prec' est vic' quod veni-  
 re fac' hic in octabis sancti Hill' xii. &c. ad recogn' in  
 forma pred', &c. Ad quem diem hic venerunt partes, &c.  
 Et vic' non mis' breve, Ideo sicut prius prec' est vic' quod  
 ven' fac' hic a die Paschæ in xv. dies xii. &c. ad recogn'  
 in form' predicta, &c. Ad quem diem hic ven' partes, &c.  
 Et vic' non misit breve, Ideo sicut prius prec' est vic'  
 quod venire faciat hic in crastino sancti Trin. 12. &c. ad  
 recogn' in forma predicta, &c. Ad quem diem hic ven'  
 partes, &c. Et vic' non mis' breve, Ideo sicut prius prec'  
 est vic' quod venire fac' hic in octab. sancti Mic. 12.  
 &c. ad recogn' in forma predicta, &c. Ad quem diem hic  
 venerunt partes, &c. Et vic' non mis' breve, Ideo sic'  
 prius prec' est vicecom' quod venire faciat hic in octab.  
 sancti Hillar. 12. &c. ad recogn' in forma predicta, &c. Ad  
 quem diem hic ven' partes, &c. Et vic' non mis' breve,  
 Ideo sicut prius prec' est vic' quod venire fac' hic a die  
 Pasch. in xv. dies 12. &c. ad recogn' in forma predicta.  
 Ad quem diem hic venerunt partes, &c. Et vic' non  
 mis' breve, Ideo sicut prius prec' est vicecom' quod venire  
 faciat hic in crastino sanctæ Trinitat' 12. &c. ad recogn'  
 in forma predicta, &c. Ad quem diem hic venerunt part'  
 &c. Et vic' non mis' breve, Ideo sicut prius prec' est vic'  
 quod venire faciat hic in octabis sancti Michael. 12. &c.  
 ad recogn' in forma pred', &c. Ad quem diem hic ve-  
 nerunt partes, &c. Et vic' non mis' breve, Ideo sicut pri-  
 us prec' est vic' quod venire faciat hic in octabis sancti  
 Hill' 12. &c. ad recogn' in forma pred', &c. Ad quem  
 diem hic venerunt partes, &c. Et vic' non mis' breve,  
 Ideo sicut prius prec' est vic' quod venire faciat hic a die  
 Pasch. in xv. dies 12. &c. ad recogn' in forma predicta, &c.  
 Ad quem diem hic venerunt partes, &c. Et vic' non mis'.  
 breve, Ideo sicut prius prec' est vic' quod venire faciat  
 hic in crastino sanctæ Trin' 12. &c. ad recogn' in forma  
 predicta, &c. Ad quem diem hic ven' partes, &c. Et vic'  
 non mis' breve, Ideo sicut prius prec' est vic' quod ve-  
 nire faciat hic in octabis sancti Micha. 12. &c. ad recogn'  
 in forma predicta, &c. Ad quem diem hic ven' par-  
 tes, &c. Et vic' non mis' breve, Ideo sicut prius prec' est  
 vic' quod venire faciat hic in octab. sancti Hillar' 12. &c.  
 ad recogn' in forma pred', &c. Ad quem diem hic vene-  
 runt partes, &c. Et vic' non mis' breve, Ideo sicut pri-  
 us prec' est vic' quod venire fac' hic a die Pasch. in  
 xv. dies 12. &c. ad recogn' in forma predicta, &c.

# **BETTISWORTH's Case. PART I**

Ad quem diem hic venerunt partes, &c. Et vic' non misit breve, Ideo sicut prius prec' est vic' quod venire fac' hic in crastino sancti Trin. xii. &c. ad recogn' in forma predicta, &c. Ad quem diem hic venerunt partes, &c. Et vic' non misit breve, Ideo sicut prius prec' est vicecom' quod venire fac' hic in octab. sancti Mich. xii. &c. ad recogn' in forma predicta, &c. Ad quem diem hic ven' partes, &c. Et vic' non misit breve, Ideo sicut prius prec' est vic' quod venire faciat hic in octab. sancti Hill' 12. &c. ad recogn' in forma predicta, &c. Postea continuat' process. inter partes predictas de predicto placito per Jur' posit' inde inter eas in respect. hic usque ad hunc diem scil't in octab. sancti Michaelis, anno regni dom' reginæ nunc tricesimo primo, nisi Just' domine reginæ ad Assisas in comitatu predicto capiend' assign' per formam statuti, &c. die Veneris vicesimo septimo die Junii proxim' preterit' apud Estringsted in comit' pred' prius venissent. Et modo hic ad hunc diem ven' tam pred' Johann' Hayward quam pred' Thomæ Bettisworth per Attornatos suos predictos, Et prefat' Jur' ad assisas coram quibus, &c. misit hic record' suum in hæc verba. Postea die & loco infracontent' coram Robert' Clarke uno Baron' dom' reginæ scaccarii sui, & Johanne Puckering uno servien' domine reginæ ad legem Jur' ipsius dom' reginæ ad assisas in comit' Suffex capiend' assign' per formam statuti, &c. ven' tam infranominat' Johannes Hayward per Willielmum Siday Attorn' suum quam infrascript' Tho' Bettisworth per Johann' Lyons Attorn' suum, Et Jur' jurat' unde infra fit mentio exact' quorundam eorum, viz. Edwardus Pickham, Willihelm. Aylewin, Thom. Perley, Willihelmus Grevit, Edmundus Grey, John Locke, Johannes Capron, & Johannes Andrew venerunt. Et in jurat' ill' jur' existunt, Et quia resid' Jur' jurat' illi non comparver', Ideo alii de circumstantibus per vic' electi ad requisitionem pref. Thomæ Bettisworth, ac per mand' Justiciariorum predict' de novo apponuntur, quorum nomina in panello infrascript' affilant' secundum formam statuti in hunc modum casu nuper edit' & provis. Ac quidam Jur' sic de novo apposit', viz. Johann' Pitte, Thomas Baily, Wilhelmus Leese, & Thom' Aylewin ven', qui ad veritatem de infracontent' simul cum Jur' predictis prius impanellat' & jurat' dicend' electi triat' & jurat' dic' super sac'r'm suum quod quidam Joh' Bettisworth fuit seissit' in dominico suo ut de feodo de & infrascript' mesuag' cum gardino, 12. acr' terræ una acra bosci cum pertin' in Iping infrascript', unde infrascript' locus in quo, &c. est & infrascript' tempore quo, &c. necnon a tempore cujus contr' memoria minim' non existit fuit parcella: Et ulterius Jur' predicti dicunt super sac'r'm suum pred', quod predict' locus



in quo, &c. continet & pred' tempore quo, &c. continebat in se unam acram & dimid' unius acrae terr', & voc' per nomen de **Reynolds**, & est & pred' tempore quo, &c. necnon a tempor' cujus contrar' memoria hominum non existit fuit sepeale clausum per se separat' inclus. Et ulterius Jur' pred' dic' super sacrament' suum quod pred' Johann' Bettisworth sic inde ut presert' seisit' existen', postea scilicet vicesimo die Martii, anno regni dictae d'nae reginae nunc undecim' apud Iping pred' per Indent' suam infra script' factam inter pref' Johannem Bettisworth ex una parte, & pred' Johann' Hayward ex altera parte, dimisit, concessit, & ad firmam tradidit pref. Johann' Hayward ten'ta pred' cum pertin' unde, &c. Habend' & tenend' eadem ten'ta cum pertin' unde, &c. pref. Johann' Hayward & assign' suis a festo Annunc' beatae Mar' virginis tunc prox' sequent', usque finem & termin' 21. annorum prox' sequent' & plenar' complend': Reddend' & solvend' inde annuatim duran' d'co termino pref. Johann' Bettisworth & assign' suis 12. denarios ad festum sancti Michael' Archang', vel infra decem dies prox' post idem festum, virtute cujus quidem dimission' idem Johann' Haward in ten'ta pred' cum pertin' unde, &c. intravit & fuit inde possessionat', reversione inde pref. Johann' Bettisworth & hered' suis spect', ipsoque Johann' Hayward sic de ten'tis pred' cum pertin' unde, &c. possessionat' existen', & pred' Johann' Bettisworth de reversione inde ac de redditu pred' seisit' existen' in dominico suo ut de feodo, Idem Johann' Bettisworth in pred' clausum in quo, &c. voc' **Reynolds**, in possessione pref. Johann' Hayward intravit, ac ib'm immediate postea quoddam factum continen' feoffamentum de ten'tis pred' cum pertinentiis unde, &c. cuidam Will'o Bettisworth haeredibus & assign' suis imperpet', ut factum suum sigillavit & deliberavit; Ac ulterius Jur' pred' dic' super sac'm suum pred', quod immediate post sigillationem & deliberationem fact' feoffam'ti pred' possessio & seisin' super fact' feoffament' ill' dat' & deliber' fuit per pred' Johann' Bettisworth pref. Will' Bettisworth, in & super pred' clauso voc' **Reynolds** in quo, &c. nec pref. Johann' Hayward nec aliquo alio pro eo tempore dict' possessionis & seisin' dat' & deliberat' in eodem clauso existen', virtute quorum idem Will' Bettisworth in ten'ta pred' cum pertin' unde, &c. intravit, & inde fuit seisit' prout lex postulat; Et ulterius Jur' pred' dic' super sac'm suum pred', quod pred' Johann' Hayward tempore possession' & seisin' pred' dat' & deliber' fuit in mesuag' & resid' tenementorum pred' cum pertin' virtute dimiss. pred' sibi inde factae, Ac quod postea & ante pred' tempus quo, &c. pred' Johann' Hayward in pred' clausum vocat' **Reynolds** cum pertin' in quo, &c. reintravit, clamans eund' clausum virtute



virtute dimissionis pred' sibi in forma pred' fact'. Et ulterius Jur' pred' dic' super sac'm suum pred', quod postea & ante pred' tempus quo, &c. scil't 3. die Januarii anno regni dict' dom' reg' nunc decimo nono idem Johann' Bettisworth apud Iping pred' obiit sine exit' de corpore suo exeunt': Et quod pred' Thom. Bettisworth est ejus frater & hæres propinquior: Sed utrum super tota materia pred' in forma pred' comperta possessio & seifina modo & forma pred' dat' & deliberat', de & in pred' clauso voc' **Reynolds** in quo, &c. sit, sive in legi adjudicari debeat bona & legitima possess. & seifin pro pred' clauso voc' **Reynolds** in quo, &c. Jur' pred' penitus ignorant, & inde pet' advisament' Justic' dict' dom' reginæ. Et si super tota materia pred' in forma pred' comperta, videbitur Justic' dict' dom' reg' quod pred' possess. & seifina modo & form' pred' dat' & deliberat' de & in pred' clauso voc' **Reynolds**, sit sive in lege adjudicari debeat bona & legit' possess. & seifin' pred' clausi voc' **Reynolds** in quo, &c. cum pertin', &c. tunc Jur' pred' dic' super sac'm suum pred' quod pred' Johann' Bettisworth non obiit de reversione omnium tenement' infra script' cum pertin' unde, &c. nec de reddit' infra script' seifit', prout pred' Johann' Hayward interius pro se allegavit, & tunc assid' dampna ipsius Johan' Hayward occasione infra script' ultra mis. & custag. sua per ipsum circa sect' suam in hac parte apposit' ad 4 denar', & pro mis. & custag' illis ad duos denar': Sed si super tota materia pred' in forma pred' comperta videbitur Just' dictæ dom' reginæ quod pred' possessio & seifina modo & forma pred' dat' & deliberat' de & in pred' clauso vocat' **Reynolds** in quo, &c. non sit nec in lege adjudicari debeat bona & legit' possess. & seifina pro pred' clauso voc' **Reynolds** in quo, &c. tunc Jur' pred' dic' super sac'm suum, quod pred' Johann' Bettisworth obiit de reversione tenement' pred' cum pertin' unde, &c. ac de reddit' pred' seifit', prout pred' Tho' Bettisworth interius pro se allegavit, & tunc assid' dampna ipsius Tho' Bettisworth occasione infra spec' ultr' mis & custag' sua per ipsum circa sect' suam in hac parte apposit' ad 4 denarios. Et pro misis & custag' illis ad duos denarios. Et quia Just' hic se advisare volunt de & super premiss. priusquam judicium inde reddant, dies dat' est partibus pred' hic usque in octab. sancti Hill' de audiendo inde judic' suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Johann' Hayward quam pred' Tho' Bettisworth per attornat' suos pred': Et quia Just' hic ulterius se advisare volunt de & super premiss. priusquam judicium inde reddant, dies ulterius dat' est partibus pred' hic usque a die Pasch. in xv. dies de audiend' inde judic' suo, eo quod Just' hic inde nondum, &c. Ad quem diem hic ven'

tam pred' Johann' Hayward, quam pred' Thom. Bettisworth per attornatos suos pred'; Et quia Justic' hic ulterius se advisare volunt de & super premissis priusquam judicium inde reddant, dies ulterius dat' est partibus pred' hic usque in crastino S. Trinitatis de audiendo inde judicio suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Johann' Hayward, quam pred' Tho' Bettisworth per attornat' suos pred', Et quia Justic' hic ulterius se advisare volunt de & super premissis priusquam judic' inde redd', dies ulterius dat' est partibus pred' hic usque in octabis S. Michaelis de audiendo inde judic' suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Johan' Hayward quam pred' Tho' Bettisworth per attorn' suos pred', Et quia Justic' hic ulterius se advisare volunt de & super premis. priusquam judic' inde redd', dies ulterius dat' est partibus pred' hic usque in octabis S. Hillarii de audiendo inde judic' suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Jo. Hayward quam pred' Tho' Bettisworth per attornat' suos pred', Et quia Justic' hic ulterius se advisare volunt de & super premissis priusquam judic' inde redd', dies ulterius dat' est partibus pred' hic usque a die Paschæ in xv. dies de audiendo inde judic' suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Johann' Hayward quam pred' Tho' Bettisworth per attornat' suos pred', Et quia Justic' hic ulterius se advisare volunt de & super premissis priusquam judic' inde redd', dies ulterius dat' est partibus pred' hic usque in crastino S. Trinitatis de audiendo in judic' suo, eo quod iidem Justic' hic inde nondum, &c. Ad quem diem hic ven' tam pred' Johannes quam pred' Thomas per attornatos suos pred'. Et super hoc visis premissis, & per Justic' hic plene intellectis: Concess. est quod pred' Johannes nihil capiat per breve suum pred', sed sit in misericordia pro falso clamore suo; Et pred' Thomas eat inde sine die, &c. Et habeat replem' averiorum pred' detinend' sibi irrepleg' imperpetuum, Et qualiter, &c. Vic' constare fac' hic in octabis S. Michaelis, &c. Concess. est quod pred' Thomas recuperet versus pref. Johannem dampna sua pred' ad sex denarios per Jur' pred' in forma pred' assess. necnon undecim libras, decem & novem solidos & sex denarios eidem Thomæ ad requisitionem suam pro misis custagiis suis pred' per Cur' hic de incremento adjudicat': Quæ quidem dampna in toto se atting' ad 2. l.

Paschæ

Pasch. 22 Eliz. Rot. 738. and  
*adjudged in the Common Pleas*  
 Trinit. 33 Eliz.

BETTISWORTH's Case.

Moor 250. 2  
 Rot. 4. Co. Lit.  
 48. b.

(a) Dyer 18. pl.  
 206. 2 Brownl.  
 230. Cr. El. 322.  
 2 Rot. 4. Co.  
 Lit. 48. b.

(b) F. N. B. f. 2.  
 C. Co. Lit. 4. 2.

(c) Co. Lit. 201.  
 b.

(d) Cr. El. 322.  
 Co. Lit. 48. b.

**I**N a Replevin between *Hayward* and *Bettisworth* in the Common Pleas, which began *Pasch. 22 Eliz. Rot. 738*, the Case was such: A Lease for Years was made of a House, of a Close called *Reynolds*, and of divers other Lands in *Dale*, which Close called *Reynolds* was inclosed and severed by itself; and afterwards the Lessee being in the House, the Lessor entered into the Close and made a Feoffment of the House and of all the Land so demised, and made Livery in the said Close, the Lessee continuing in the said House, and not put out thereof, and afterwards the Lessee re-enter'd into the said Close, and if this was a good Feoffment and Livery of Seisin of the said Close, the Lessee nor any other for him being upon the Close, was the Doubt.

And it was adjudged that the (a) Livery and Seisin was void, as well for the Close as for the House and the other Lands so demised. For when a Messuage with Land is entirely demised, the Messuage is the Principal, for that serves for the Habitation of Man, and in (b) a *Præcipe* shall be first demanded, as the more worthy before Land; and the Demand for (c) Rent Arrear shall be at the House as the most principal and notorious Thing. So that the Messuage being more worthy, and the Principal, and the Land but an Accessary, without Question the Possession of the House is a good Possession of the Land demised with it.

Secondly, The Lessee cannot be upon every Parcel of the Land for the Preservation and Continuance of his Possession, for it may be that (d) divers Parcels of the Lands demised lie in several Places, and distinct one from the other by several Distances; and therefore it is but reasonable, that his Continuance, not only in the House, but also upon any other Part of the Land demised shall be a good Possession.



Possession of the Residue. And so it was resolved by the whole Court.

Thirdly, Peradventure the Lessee durst not for Fear of Force, &c. be upon the Land to preserve his Possession, but his House is his (a) Castle which he may by Law safely keep, (a) 5 Co. 91. b. and therefore the Case of the House is stronger. And this 7 Co. 6. a. Cro. El. 753. Difference was taken when a Man lawfully departs with his 8 Co. 126. a. Possession, and when a Man keeps his Possession against an 11 Co. 82. a. unlawful and torcious Entry. For when a Man makes a 1 Bulstr. 146. confinement of a (b) Messuage cum pertinentiis, he departs with (b) Plowd. 186. nothing thereby but what is Parcel of the House, scil. the 21 H. 8. Br. Feoffment 23. 31 H. 8. Br. Leases 55. buildings, (c) Curtilage, and Garden; but in the Case at (c) Co. Lit. 5. the Keeping of the Possession of the House or any Part of the Thing demised against a torcious Entry and Expulsion by the Lessor is not only a Possession of all that which might pass by the Name of the House or of such Parcel, (d) Co. Lit. 48. b. but of all Lands, &c. which are demised by one entire demise in one and the same County for the Reasons and causes afore said. And it is not material whether the thing where the Livery was made be within the View or not; but if the Lessee for Years in the same Case make a lease for a (e) certain Term of any Parcel, and so divides (e) 2 Rol. 4. the Possession thereof from the Residue, if of such Parcel severed Livery be made, the Possession in the Residue by the first Lessee is not any impediment to the Livery of this Parcel; otherwise if the Lessee makes a Lease (f) at Will (f) 2 Rol. 4. any Parcel, for there his Possession of the Residue shall Dyer 18. b. pl. 106. under the Livery made in such Parcel. And with this Argument agreed all the other Judges and Serjeants of Serjeants Inn in Fleetstreet.

Ter.

# Ter. Mich. 36 & 37 Elizab.

## DODDINGTON's Case.

Poph. 60.  
2 Rol. 51. Cr.  
El. 368.

**W**illiam Hall brought an Ejectment against John Peart and James Peart, on a Demise made by William Doddington of Lands in the Parish of Dynder in the County of Somerset 16 Martii 24 Eliz. for seven Years, from the Feast of St. Michael then past; and upon Not guilty plea d. the Jury gave a special Verdict to this Effect: King Hen. 8. was seised of the Scite of the late Hospital of St. John of Wells in the said County of Somerset, and of all the Lands and Tenements appertaining to the said late Hospital (whereof the Tenements aforesaid, in which, &c. were Parcel) and that the Tenements aforesaid, in which, &c. lay in the Parish of Dynder, and are distant from the City of Wells and from the Suburbs and Liberty thereof by the Space of a League; And afterwards the said King, by his Letters Patents bearing Date 26 Martii, 36 of his Reign, under the Great Seal (*ex certa scientia & mero motu suis*) & in consideration de 300l. dedit & concessit Johanni Aylworib & Radulpho Duckinfield, omnia & singula illa messuagia, iostia, cottagia, terras, tenementa, edificia, & gardina sua quacunqu cum pertinentiis tunc vel nuper in separalibus tenuris sive occupationibus Thoma Gibbes, Johannis Brown (and divers others by special Names) scituat, jacent seu existen in Civitate Wells in dicto Com' Somerset, ac in suburbiis ejusdem Civitatis & extra eand' Civitatem infra jurisdictionem & libertatem ejusdem Civitatis dicto nuper Prioratui sive Hospitali dudum spectant & pertinent, qua quidem messuagia, iostia, &c. in dicta Civitate Wells ac suburbiis dicto nuper Hospitali spectant tunc extendebantur ad clarum annum valorem 40l. 3s. 8d. Habendum & tenendum omnia & singula premissa per

profero Jo. A. & Ra. D. & heredibus suis, ad opus & usum  
 predicti J. A. & heredum suorum. And the Jury further  
 found, that at the Time of the Particular made by the Au-  
 ditor of the said late King upon which the said Grant was  
 made, and at the Time of the Grant aforesaid, the said  
 John Brown was Tenant of the Tenements aforesaid, in  
 which, &c. for the yearly Rent of 6s. 8d. which John  
 Brown was named in the said Particular, and that he paid  
 the said Rent. And the Jury found that the said John Brown  
 at the Time of the said Particular and Grant was Farmer of  
 the Tenements in which, &c. and had not any other Lands  
 Parcel of the said late Hospital in Wells, but only the Te-  
 nements in which, &c. And that the said Rent of 6s. 8d.  
 was Parcel of the Value of the said 40 l. 3s. 8d. mentioned  
 in the said Particular, and in the said Letters Patents. And  
 that the said John Ayleworth died, and that Ashton  
 Aylew. his Son and Heir demised the Tenements afore-  
 said to the Defendants for their Lives. And that the Queen  
 that now is 5 Jul. 30 of her Reign, granted to Edw. Bo-  
 rough the Residue of the Tenements appertaining to the said  
 late Hospital not granted to Jo. A. and Ra. D. who by Deed  
 enrolled sold them to the said William Doddington, who leased  
 them to the Plaintiff, prout, &c. upon whom the Defendants  
 entered. And if their Entry was lawful or not was the Que-  
 stion. And in this Case two Points were moved:

1. Whether this Grant of the King was good by the Com-  
 mon Law or not.

2. If it was void by the Common Law, whether the Statute  
 (a) 34 H. 8. cap. 21. hath made it good.

And as to the first Point it was resolved by Popham Chief  
 Justice, Clench, Gawdy, and Fenner Justices, that the Grant  
 was void by the Common Law, as this Case is, as well in  
 the Case of a common Person as in the Case of the King.

For as to that, the Point is but thus, the King or a com-  
 mon Person grants *omnia illa mesuagia in tenura Johannis*  
*Brown, situat in Well, nuper Prioratus de W. spectant*, and  
 (b) Truth the Lands lie in D. in this Case, because the  
 Grant is general, and is restrained to a certain Town, the  
 Patentee or Grantee shall not have any Lands out of the  
 Town to which the Generality of the Grant doth refer.

And this Case is the stronger by Reason of this Pronoun

(c) (*illa*) for *omnia illa mesuagia*, &c. makes such a necessary  
 reference as well to the Town as to the Tenure of John

Brown, that if one or the other fail, the general Grant is

void; for (*illa*) is not satisfied till the Sentence is ended,

and (*illa*) governs all the Sentence till the full Stop. Where-

fore it was unanimously agreed by the whole Court, (d) that

F

this

(a) Rastal Pa-  
 tents 12. Cr.  
 Jac. 50, 51.

Godb. 416. 422.  
 Moor 45. 421.

Poph. 60. 34 &  
 35 H. 8. c. 21.

2 Rol. Rep. 273.  
 274. 355, 356.

359. Dyer 87.  
 pl. 101. 129. pl.

65. 331. pl. 22.  
 (b) Cr. Car. 473.

548. 2 Rol. 54.  
 55. Moor 45.

881. Cr. El. 295.  
 388. Cr. Jac. 22,

34. 48, 680.  
 1 Anderson 148.

3 Leon. 162, 235.  
 1 Leon 21. 3 Co.

10. 2. Carter 154.  
 Plowd. 191. b.

10 Co. 113. a.  
 Dyer 50. pl. 6, 7,

8, 87. pl. 101.  
 125. pl. 65.

2 Bulstr. 178.  
 Godbolt 416.

Hob. 171.  
 Goldb. 23, 24.

10 Co. 113. 2.

(c) 4 Co. 35. a. Poph. 60. Cr. Jac. 48. Moor 755.

3 Keb. 413, 414. Hard. 225. 10 Co. 113. 2.

2 Rol. Rep. 275. Poph. 60.



this Grant was void by the Common Law. But the great Doubt was conceived upon the second Point; for the said Act of 34 H. 8. makes all Letters Patents which shall be made within seven Years after good, notwithstanding the mis-naming of any Town wherein the Honours, Manors, &c. granted do lie. And it was said, that here the Town was mis-named, for the Tenements lay in D. and are supposed by the Patent to lie in W. and so the Town is mistaken. And to this Purpose the Book in 3 Mar. Dier *cap. 6* is cited, (a) *Heydon's Case*, where it is conceived that the Misprision of the Town and of the Name of the Tenements also are remedied by the said Act. And in this Case at the Bar it appears that the Tenements in the Tenure of J. B. were contained within the Particular, and were Parcel of the Value mentioned in the Letters Patents which John Aylmer and *Ra. D.* purchased of the King. And by the Letters Patents all Lands in the Tenure of J. B. &c. are granted, as appears before. And so it appears as it was objected, That it was the King's Intent to pass them, and that the King was not deceived in his Grant, for they were Parcel of the Value which the Patentees purchased, and that the King hath accepted a Consideration of Money from the Patentees for the same.

But it was resolved by the whole Court, that notwithstanding these Lands were in the Tenure of J. B. for the Rent of 6s. 8d. and were Parcel of the Value mentioned in the Letters Patents; and if this Misprision of the Town be not remedied by the said Act, the Patentees should lose so much of their Value as was in the Tenure of J. B. and the said Grant of all the Lands in the Tenure of J. B. should by the Misprision of the Town only be utterly void; yet the said Grant was not remedied by the said Act. And a Difference was taken between a general Grant as our Case is, and a Grant which comprehends (b) convenient Certainty: For such general Grants are not remedied by the said Statute, nor by any other Act of Confirmation of Letters Patents, but such Grants only which comprehend convenient Certainty, and that for two Reasons:

1. Because (c) *generale nihil certum implicat*; For if a common Person be (d) bound to devise or grant all his Lands in the Tenure of J. B. in W. the Obligor may say that he hath not any Lands there, for *generale nihil potest compelli*; and with that agreeth the Book in 21 E. 4. If a Man be bound to be Nonsuit in all Actions which he hath against him in the Common Pleas, he may say, he had no Action there; otherwise if the Condition be particular, *scilicet* that he shall be Nonsuit in a *Formedon*, &c. So that it appears

(a) Dyer 129.  
pl. 65.  
Godb. 432. pl.  
491. 2 Rol. Rep.  
360. 3 Leon. 162.  
1 Anderson 148.  
Goldb. 23, 24.

(b) 3 Co. 10. 2.  
Moor 45. Dyer  
50. pl. 6, 7, 8.

(c) 2 Rol. Rep.  
360. 3 Keb. 414.  
2 Sid. 36. 8 Co.  
98. 2.  
(d) 1 Rol. 872.  
Cr. El. 362. 2.  
Rol. Rep. 83.  
Poph. 114, 115.  
Owen 112, 111.  
Moor 406. Dall.  
28. 1 Rol. Rep.  
40.

that general Words do not imply any Certainty, nor shall  
 include any Person to say that he had nothing there,  
 and the Difference between general Grants and particular,  
 appears in *Plow. Comm.* in (a) *Wortesley's Case* 191. (b) *Cr. Car.*  
*to Aff. 8. 9 H. 6. fol. 11, 12. (c) 2 Edw. 4. 27.* Then for (d) *Fitz Affire*  
 as much as the Essence of this general Grant in the Case at *217. Br. Grant*  
 depends upon the Town, if the Town be mistaken no-  
 thing is granted. And in this Case it cannot be said that  
 the Town in which the Tenements lie, as the Statute  
 speaketh, is misnamed; for no Tenements are granted or  
 mentioned to be granted by these Letters Patents, because  
 the general Grant being entire was referred to a Falsity, it  
 cannot be construed to extend to any Lands or Tene-  
 ments, and therefore it cannot be said, that the Town in  
 which the Lands lay, &c. is misnamed.

Secondly, Great Inconvenience will follow, if such ge-  
 neral Grants shall be remedied by the said Act; for suppose,  
 that the King being seised of 1000 Acres of Land of the  
 yearly Value of 100 *per Ann.* in D. in the County of N.  
 parcel of the Possessions of the late Priory of N. and one  
 will desire the King to grant to him all his Lands in F.  
 the County of S. appertaining to the said Priory, and in  
 truth the King hath nothing in F. and because none of his  
 officers can find any Lands there appertaining to the King,  
 he was the more easily induced to make the Grant. But  
 in such Case, if by such Construction all the Land which  
 the King hath in D. in the County of N. shall pass it would  
 be inconvenient. For as it is said, (d) *Dolofus versatur* (a) *3 Co. 81. a.*  
*generalibus*; and the King and all his Officers would be *1 Roll. Rep. 157.*  
 by such Construction utterly deceived. And therefore when *2 Bulstr. 226.*  
 the general Words of the Patent do not comprehend Con-  
 tent, Number, Nature, Quality, certain Name, nor any  
 convenient Certainty of the Land, but the Town is the  
 principal Thing which restrains the Generality of the Grant,  
 and reduces it to a Certainty, it would be dangerous to  
 extend the same out of the Town comprised in the Grant  
 by any Construction upon the said Statute. But it is other-  
 wise when the Grant doth comprehend any convenient  
 Certainty, as of a Manor, Farm, Land known by a (e) *Cr. Jac. 34.*  
 certain Name, or containing so many Acres, &c. so as  
 there may appear in the Letters Patents some convenient  
 Certainty of the Thing which the King intended to pass, for  
 where the said Act doth remedy it, and the King cannot in  
 such Case be deceived. And as to the (f) *Hob. 112.*  
 edges in this Case did not give any Regard to it, for in

(a) Dyer 331.  
pl. 21. Hob. 111.

this Case they ought to ground their Judgment upon the Letters Patents, and not upon the Particular, for the Particular is *prima intentio Regis*, and the Letters Patents are *ultima intentio Regis*. And to this Purpose the Book in 16 Eliz. Dyer 331. was cited, where the Judges took no regard to the (a) Particular. But note, The principal Case there is not to be likened to the Case at Bar; for there the Words of the Letters Patent are satisfied, but not in this Case, and therefore the greater Doubt was conceived upon it; but the said Case of 16 Eliz. was agreed to be good Law by the whole Court. And afterwards Judgment was given for the Plaintiff.

Note Reader, It is the most sure Way for the Patentee to express in the King's Grant before the general Words as much as he can in certain. *Vide* 38 H. 6. 38. b. a Difference between a special Confirmation by Parliament and a general one. And the Attorney General and others were of Council with the Plaintiff, and Godfrey and others with the Defendants.



Pasch. 37 Eliz.

*In the Court of Wards.*

*Sir ROWLAND HEYWARD's Case.*

SIR Rowland (a) Heyward Knight seised in Fee of the (a) 2 Anderl. 302.  
 Manors of *Doddington*, alias *Dinton*, *Round Acton*, and *Wenlock* in the County of *Salop*, and of divers other pl. 19. Poph. 95.  
 Lands and Tenements, whereof Part was in Demean, Part 5 Co. 40. 2. Hob.  
 in Lease for Years with Rent reserved, and Part in Copy- 159.  
 hold, by Indenture dated 2 die Septembris, Anno 34 Regina  
 Eliz. in Consideration of a certain Sum of Money paid to  
 him by *Richard Warren*, *Edward Pilsworth*, and *William*  
*Cotton*, demised, (b) granted, bargained and sold to the (b) 1 Siderfin 26.  
 said *Warren*, *Pilsworth* and *Cotton*, the said Manors, Lands,  
 Tenements, and the Reversions and Remainders of them,  
 with all Rents reserved upon any Demise, to have and to  
 hold to them and their Assigns presently after the Decease  
 of the said *Sir Rowland Heyward*, for the Term of 17  
 Years, yielding to the Heirs of *Sir Rowland* a Red Rose  
 at the Feast of *St. John Baptist*; which Indenture was ac-  
 knowledged to be enrolled, and afterwards the said *Sir*  
*Rowland* by another Indenture covenanted with *Thomas*  
*Wanshow* and others to stand seised of the Premises to the  
 Use of himself and the Heirs of his Body; And no At-  
 tornment was ever made to the said *Warren*, *Pilsworth* or *Cotton*.  
 And afterwards *Sir Rowland* died seised of the Premises, his  
 heir within Age, and left a third Part to descend to his  
 heir: In the Court of Wards the Question was, Whether *War-*  
*ren* and the other Lessees should have the Demeans, and the  
 Rents of the Copyholders by the Demise, as an Interest at the  
 Common Law; and the Rents of the Lessees for Years by Bar-  
 gain

(a) 4 Co. 74. a.

gain and Sale by the Statute of 27 H. 8. without Attornment; or whether any Attornment by the Common Law was requisite at all to this future Interest, or whether the Bargainees should have (a) Election to take it by the Bargain and Sale *in toto*, or by the Demise *in toto*, notwithstanding their general Entry; or whether the Interest which passed as an Interest at Common Law should be preferred before the raising of an Use. And after many Arguments and great Deliberation, it was resolved by Popham and Anderson Chief Justices, and the whole Court of Wards:

(b) Vaughan 46.

1 Co. 104. b. 155.

b. Lit. Sect. 551.

568. Co. Lit. 151.

b. 309. a. b. 315.

a. 316. a. 9. E. 4.

39. a. 40. Aff. 19.

Br. Attornment

55.

First, If it should pass as a future Interest at the Common Law, there ought to be Attornment of the Lessees for Years, and the Attornment in this Case ought to be in the (b) Life of Sir Rowland which is before the Interest commences. But if a Man makes a Lease of a Manor to begin at a Day to come, the Tenants may attorn either before or after the Day, so as the Attornment be in the Life of the Parties. And in the Case at Bar, because there was not any Attornment of the Lessees for Years in the Life of Sir Rowland Heyward, it was resolved, that if they take this Interest as a Demise at Common Law, they should not have the said Rents reserved upon the said Leases for Years.

(c) Moor 496.

Cr. Car. 290.

2 Brownl. 52.

Hob. 159. Lit.

Rep. 279.

Secondly, That it ought to take Effect (c) intirely as a Demise at Common Law, or intirely by Bargain and Sale by raising of an Use, and not for Part by the Common Law, and for other Part by raising of an Use, for by that the Manor would be dismembered, which would be against the express Demise and Bargain; for both Parties agree that a Manor should be wholly demised and bargained, and a Manor accepted by the Lessee without any Fraction or Division thereof.

(d) 2 Rol. 787.

Hob. 159.

1 Jones 206.

Poph. 95. 2 Anderson.

203. 2 Inst. 671.

672. Postea

37. b. 1 Brownl.

142. Yelvert. 123.

124. 1 Mod. Rep.

176. 8 Co. 93. b.

94. a.

(e) Co. Lit. 49. a.

2 Rol. Abr. 64.

pl. 6.

(f) 1 R. 3. cap. 1.

Thirdly, It was resolved, that in this Case Warren, Piff-worth, and Cotton, had (d) Election to take it, either by Demise at Common Law, or by Bargain and Sale; for although at the Common Law, if (e) *Cestuy que use* and his Feoffees join in a Feoffment, Grant, or Demise generally, it shall by Construction of Law be the Feoffment, Grant, or Demise of the Feoffees who were Owners of the Lands, and who pass the Estate by Common Law, and not by *Cestuy que use* who hath nothing but a Trust and Confidence, and who derives only his Authority by the Statute of (f) 1 R. 3. as it is agreed in 21 H. 7. and the Common Law shall be in such Case by its own Construction preferred; yet when a Man seised of Land in Fee, for Money demises, grants, bargains, and sells his Land for Years, he who is Owner of the Land by his express Grant, gives Election to the Lessee to take it by the one Way or the other, for he hath sole Power to pass it by Demise or by Bargain; And therefore the Law will not make Construction against such express Grant, and namely



in this Case, when it will trench to the Prejudice of the  
 lessees; for if the Law should enforce them to take it by  
 demise, then they would lose the Rents reserved upon the  
 said Leases for Years; for it was agreed, if this Interest  
 should take Effect by Bargain and Sale, then an (a) Attorn-  
 ment is not necessary; for the Statute of 27 H. 8. cap. 10. of  
 Les, doth execute the Possession to it. And the Statute  
 27 H. 8. cap. 16. of Enrolments doth not extend to it,  
 because no Estate of Freehold passes, but (b) only an Estate  
 for Years. Also at this Day the Use and Interest pass in a  
 manner *uno flatu* together in an Instant.

Fourthly, It was resolved, that this (c) Election doth re-  
 main to them, notwithstanding the Alteration of the Estate  
 by the second Indenture, and notwithstanding the Death of  
 the Lessor, and notwithstanding also the Queen was entitled  
 to the Wardship of the Heir, as appears before; for they  
 had an (d) Interest in them presently, which they before  
 Election might assign over, and which the Executors of the  
 survivor should have, although they all died before Ele-  
 ction; for here is not Election to claim one of two several  
 things by one and the same Title, but to claim one and  
 the same Thing by one of the two several Titles; for where  
 the Things are several, nothing passes before Election, and  
 the Election ought to be precedent; but when one and the  
 same Thing shall pass, there it passeth presently, and the  
 Election of the Title may be subsequent; and therefore if  
 I have three Horses, and I give you one of my Horses, in  
 this Case Election ought to be made in the Life of the  
 parties, for in as much as (e) none of the Horses is given  
 certain, the Certainty, and thereby the Property begins  
 at Election. And with that agreeth 10 Eliz. 281. (f) Bullock's  
 Case; The Bp. of Sarum having a great Wood of 1000 Acres  
 called Berewood) enfeoffed another of an House and 17  
 Acres Parcel of the Wood, and made Livery in the House,  
 one of the Wood passed before Election, and therefore  
 the Heir shall not make Election: But when one only  
 thing is granted, and the Party hath Election to take it  
 in one Manner or another, there the Interest vests presently,  
 and it shall be always in the Election of the Grantee or  
 his Executors at any Time to elect in what Manner and  
 Degree he will claim it: As if I grant you a Rent of 40 s.  
 out of my Manor of D. for Years, you shall have in this  
 Case but one Sum of 40 s. but you shall have Election to  
 take it in what Manner and Degree you will, that is to say,  
 either as a Rent-charge to charge the Manor by Distress,  
 or to charge the Person of the Grantor in a Writ of Annuity,  
 and therefore the Interest passeth presently, and you or your  
 Executors at any Time shall make Election at your Pleasure,  
 and in the mean time the Law will not determine it one way or  
 other.

(a) Co. Lit. 309.  
b. Cr. El. 285.5 Co. 113. a. 6 Co.  
68. b. 69. a. 8 Co.  
94. a.(b) 2 Rol. Rep.  
204. 2 Inst. 671.  
8 Co. 94. a.

(c) 1 Jones 206.

(d) Co. Lit. 145.

(e) C. Lit. 145. a.

(f) 1 Rol. Abr.  
725. 1 Jones 136.  
Hob. 174. 222.  
1 Anderl. 11. 12.  
Dyer 280, 281.  
pl. 17, 18, 19, 20.  
Moor 81, 82, &c.  
N. Ben. 148. pl.  
206. 1 Rol. Rep.  
187. 2 Rol. Abr.  
11.(g) Co. Lit. 144.  
b. 145. a. F.N.B.  
152. a. Plow. 13.  
a.



other. And therefore it was resolved by all the Justices of England, and afterwards adjudged in the Common Pleas in a Writ of Annuity between George (a) Fulwood, Gent. Plaintiff, and William Ward, Gent. Defendant, where the Case was: That William Ward being Tenant for Years determinable upon the Life of Thomas Lord Paget of a Barn and certain Tithes in Stretton in the County of Stafford granted a Rent of 10 l. per Ann. by his Deed bearing Date 30 Junii 29 Eliz. out of the said Barn and Tithes to George Fulwood for 15 Years, with Clause of Distress; and afterwards 32 Eliz. the Lord Paget died, and the Writ of (b) Annuity was maintainable for the Arrearages after the Death of the Lord Paget, for there was not Election to have one of two several Things, but to have one Sum in one Degree as a Rent-charge, or in another as an Annuity: And therefore presently by the Grant the Thing vested in the Grantee, and his Election doth always remain, either to make it a Thing real to charge the Land, or a personal Thing to charge the Person. And there in the principal Case the Act of God, *scil.* the Death of the L. Paget by which the Rent-charge was determined, was no Determination of the (c) Annuity. So in the principal Case, Election being given to the said Lessees to have one and the same Thing by one Means or another, there the Lessees have the Interest vested in them presently, and Election doth always remain in them in what Manner they will take it. But when Election is given to (d) several Persons, there nothing vests before Election, and the first Election shall stand. As if a Man makes a Lease for Life of two Acres, the Remainder of one Acre to L. S. and of the other Acre to J. N. he who first makes Election shall enjoy the one Acre, and thereby the other Acre hath vested in the other. And it was said: If a Man gives (e) two Acres to another, *Habendum* one Acre to him in Fee, and the other Acre to him in Tail, and he aliens both and hath Issue and dies, in this Case the Issue may bring a *Formedon in descender*, for which acre he will for the Election is not determined by his Death: for as the Estate passes presently by the Livery, and the Issue shall take by Descent. But in the Case of 10 Eliz. 281 (f) *Bullock's Case*, if the Heir of the Feoffee should make the Election, he would be in as a Purchaser, for there nothing passed of the 17 Acres to the Feoffee before Election, and by the Law he cannot be a (g) Purchaser; for there the Words (h) (his Heirs) were Words of Limitation. So note Reader these Differences concerning Election.

1. When (i) nothing passeth to the Feoffee or Grantee before the Election, to have one Thing or the other, there the Election ought to be made in the Life of the Parties, and the Heir or Executor cannot make the Election.

(a) Moor 301.  
Co. Lit. 148. a.  
349. a. 3 Anderf.  
1. Poph. 86.

(b) Co. Lit. 349.  
2.

(c) Co. Lit. 148.  
2. 349. 2.

(d) Co. Lit. 145.  
2.

(e) Moor 85.

(f) Moor 81.  
Hob. 174. 1 Anderf. 11. Dyer  
280, 281. pl. 17,  
18, &c. Antea  
96. 2.

(g) Moor 86, 84.

(h) 1 Co. 95. b.  
104. a. 105. b.

(i) Co. Lit. 145.  
2.

But (a) when an Estate or Interest passeth presently (a) Co. Lit. 145. to the Feoffee, Donee or Grantee, there Election may be made by them, or by their Heirs or Executors.

2. When a (b) Thing passeth to the Donee, or Grantee, (b) Co. Lit. 145. and the Donee, or Grantee hath Election in what Manner or Degree he will take it, there the Interest passeth presently, and the Party, his Heirs or Executors may make Election when they will.

3. When Election is given to (c) several Persons, there (c) Co. Lit. 145. the first Election made by any of the Parties shall stand.

4. In case Election be given of two several Things, always he who is the first Agent, and who ought to do the first Act shall have the Election. As if a Man (e) grant Rent of 20 s. or a Robe to one and his Heirs, the Grantor shall have the Election, for he is the first Agent by Payment of the one, or Delivery of the other. (f) So if a Man makes a Lease yielding Rent, or a Robe, the Lessee shall have the Election, *causa qua supra*. And with that agree the Books 9 E. 4. 36. b. 13 E. 4. 4. b. L. 5 E. 4. 6. b. 11 E. 3.

(g) Annuity 27. 11 Aff. 8. 29 Aff. 55. 3 E. 3. Affize 175. (g) 5 Co. 40. 2. 13 E. 3. Barre 194. But if I give you one of my (h) Horses in my Stable, there you shall have Election, for you shall be the first Agent by Taking or Seizure of one of them, 2. H. 7. 23. a. And if one grant to another 20 Loads of Hasel, or 20 Loads of Maple to be taken in his Wood of D. there the Grantee shall have Election, for he ought to do the first Act, *scil.* to cut and take it.

5. When the Things granted are (i) annual Things and are to have Continuance, there the Election remains to the grantor (in Case where the Law gives him Election) as well after the Day as before; otherwise when the Things are to be performed *unica vice*. And therefore, if I grant to another for Life an Annuity (k) or a Robe at the Feast of Easter, and both are behind, the Grantee ought to bring his Writ of Annuity in the Disjunctive, for if he should bring his Writ of Annuity for one only and recover, this Judgment should determine the Election for ever; for he should never have a Writ (l) of Annuity after, but a (m) *Scire facias* upon the said Judgment; which Reason Fitzherbert in his 2. B. not observing, held Opinion contrary. But if I contract with you to pay you 20 s. or a Robe at the Feast of Easter, after the Feast you shall bring Debt for the one or the other, *Vide* 9 E. 4. 36. b. 13 E. 4. 4. b. and the Books before.

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6. The Feoffee by his Act and Wrong may lose his Election, and give it to the Feoffor; as if one enfeoff another of two Acres, to have and to hold, one for Life, the other in Tail, and he before Election makes a Feoffment of both, in this Case the Feoffor shall enter into which Acre he will for the Act and Tort of the Feoffee.

7. Although the Lessees in the Case in question have enter'd generally, yet they may afterwards elect either to take by the Demise, or by the Bargain and Sale, for their general Entry cannot be any Determination of the Election, no more than if one be Executor and Devisee of a Term and he entereth generally, it is no Determination of his Election; And after the Lessees made their Election to take it by Bargain and Sale, and thereupon they had the Rents reserved upon the Leases for Years, which otherwise they could not have.

Pasc

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## Pasc. 38 Eliz.

**M**emorandum quod alias scil' termino sancti Michaelis South<sup>r</sup>  
ultim' præterito coram domina Regina apud West-  
monasterium ven' Robert' Wright qui tam pro domin'  
Regina quam pro se ipso sequitur per Thom' Webbe Jun'  
attorn' suum. Et protulit hic in cur' dict' dom' reginæ  
tunc ibidem quandam billam suam versus Johannem  
Wright executorem testamenti & ultimæ voluntatis Ni-  
chol' Wright defunct' nuper dum vixit firmarii (ut asse-  
ruit) Rectoris Ecclesiæ parochialis de Eastmeon, alias dict'  
Eastmeane Winton' dioc' Cantuarien' que provinc' in custod'  
Marr' &c. de placito transgress. & Contemptus vers. eos qui  
prosequunt' in cur' Christianitatis contra prohibition' re-  
gam prius inde in contrar' direct' & deliberat'. Et sunt  
leg' de prof. scil' Jo' Doo, & Richard' Roo quæ quidem  
illa sequit' in hæc verba, ss. South. ss. Robertus Wright  
tam pro domina regina quam pro seipso sequitur, que-  
rit de Johann' Wright executore testamenti & ultim'  
voluntatis Nicholai Wright defunct' nuper dum vixit fir-  
marii (ut asseruit) Rectoris Ecclesiæ parochialis de East-  
meon alias dict' Eastmeane Winton' dioces. Cantuarien'  
que provinc' in custod' Marr' Marefc' dom' reg' coram ipsa  
regin' existen' de placito quare sequut' est in cur' Christia-  
nitatis post prohibitionem regiam prius in contrarium inde  
direct' & deliberat', pro eo viz. quod cum omnia & singu-  
la placita & cognitiones placitorum de quibuscunque con-  
cessionibus dimissionibus seu contract' infra hoc reg' Ang'  
emergent' habitis vel factis, ac hujusmodi concessionum seu  
dimission' validitate in lege cæteraque hujusmodi placita  
& cognitiones placitorum dummodo non sint de testa-  
ment'

ment' vel matrimonio ad dictam domin' reginam nuno & coronam suam regiam specialiter pertineant, ac per legem terr' hujus regni Angliæ & non per Jura seu censur' ecclesiasticas triari terminari & discuti debeant, & semper tenuis consueverunt & debuerunt: Cumque Stephanus per missionē divinā nuper Winton' Episcopus quarto die Julii anno regni domini Henrici nuper regis Angliæ octavi tricesimo octavo, seiscitus fuisset in dominico suo ut de feodo Jure nuper Episcopatus sui prædicti de & in manerio de Eastmeon in comitatu Southampton, unde unum capital' mesuagium cum pertinentiis vocat' *the Scite of the Manor of Eastmeon*, octingent' acra terræ quadragint' acra prati, mille acra pastur' & quadragint' acra bosci cum pertinentiis in Eastmeon in comitatu prædicto (existen' terr' dominicalibus manerii prædicti) adtunc & a tempore cujus contrarii memoria hominum non existit, fuerunt & adhuc sunt parces ac etiam de & in uno mesuagio cum pertinentiis in Eastmeon prædict' existen' domo mansional' manerii illius; Cumque idem Stephanus & omnes prædecessores sui Episcopi Episcopatus prædicti pro tempore existen' seiscit' de manerio prædict' & cæteris præmissis cum pertinentiis, scitum manerii prædicti & capitale mesuagium prædictum, ac terr' dominical' prædict' cum pertinentiis a tempore cujus contrarii memoria hominum non existit, per se, firmar' & tenore suorum inde, & cujuslibet inde parcell' pro termino annorum seu ad voluntatem tenuerunt & gavis' fuerunt exonerat' ac quietat', immunit', & privilegiat', de & a solutione decimarum quarumcunque, de, in, vel super capitali mesuagio prædicto & terr' dominicalibus prædictis cum pertinentiis & qualibet seu aliqua inde parcella annuatim quovismodo per totum tempus prædictum crescen', contingen', renovan' seu provenien' præfatoque Stephan' nuper Episcopo prædicto de capitali mesuagio prædicto & terr' dominicalibus prædictis cum pertinentiis in forma prædicta seiscit' existen', eadem habente & tenente exonerat', ac quietat', immunit', privilegiat', de & a solutione decimarum quarumcunque, de, in, vel super capitali mesuagio prædicto & cæteris præmissis cum pertinentiis, seu aliqua inde parcella crescen', renovan', seu quoquo modo contingen', idem Stephan' prædicto quarto die Julii, anno regni dicti nuper regis Henrici octavi tricesimo octavo, apud Eastmeon in comitatu prædicto per quandam Indenturam suam, sigillo suo Episcopali sigillat', Curiaque dictæ dominæ reg' nunc hic prædicta lat' geren' dat' eisdem die & anno dimisit cuidam Robert' Wright avo ipsius Roberti modo querent' medietat' terr' dominical' prædicti cum pertinentiis, per nomen omni

terrarum dominicalium maner' de Eastmeon prædict'  
 antiquo pertin', cum omnibus domibus, stabulis, hor-  
 is, & ædificiis super medietat' prædict' tunc & ab antiquo,  
 tuat', jacen', & existen' cum pertinentiis, quæ quidem  
 medietas adtunc jacuit in campis ex parte Australi villæ  
 Eastmeon prædict' una cum pratis, pascuis, & pasturis,  
 ausuris, viis, semetis, & aliis suis pertinentiis una cum  
 ma quadringent' Muttonum vocat' *Meathers*, præcii  
 capital' sexdecem denariorum, quadringent' ovium matri-  
 cium præcii capital' sexdecem denariorum: Habendum & oc-  
 pandum medietat' illam tenementorum prædict' cum  
 pertinentiis in forma prædict' dimiss. præfato Roberto  
 Wright avo & assignatis suis, a festo Sancti Michaelis Arch-  
 angeli, anno domini millesimo quingentesimo septuagesimo  
 quinto, usque finem & terminum quadragint' annorum  
 tunc proxim' sequen' & plenarie complend' & finiend':  
 reddendo inde annuatim durante termino prædict' præ-  
 fato Stephano nuper Episcopo prædict' & successoribus suis  
 scaccarium suum de Wolvesley in Winton' in Comitatu  
 Northampton tunc existen' decem libras & decem solidos  
 monete Angliæ, ad festa Paschæ & Sancti Michaelis  
 Archangeli per equales porciones solvend'; Et pro fir-  
 ma prædicta prædict' quadraginta Muttonum, & quadragin-  
 ovium matricium, undecem libras tresdecem solidos &  
 quatuor denarios, solvend' ad festum Sancti Petri quod  
 citur ad Vincula pro capital' Muttonibus tres denarios,  
 pro capital' ovium matricium quatuor denarios, prout  
 eandem Indenturam inter alia plenius liquet & appa-  
 ret; Quam quidem Indenturam dimissionis præfato Roberto  
 Wright avo in forma prædicta fact', ac omnia & singula  
 eadem content' postea scilicet 20. die Julii, anno 38.  
 prædicto Willihelmus Kingsmel adtunc Decanus Eccle-  
 siæ Cathedralis Sanctæ Trinitatis Winton' prædict', & Ca-  
 pulum ejusdem loci apud Winton' prædictam, videlicet  
 domo sua capitulari ibidem per quoddam scriptum  
 confirmationis sigillo suo Capitulari sigillat' in vita  
 præfati Stephani tunc Winton' Episcopi prædicti existen',  
 in vita præfati Roberti Wright avi modo defuncti ra-  
 taverunt & confirmaverunt, prout per script' confirma-  
 tionis illius geren' dat' die & anno ultimo supradicto inter  
 alia plenius liquet & apparet: virtute quarum quidem  
 dimissionis & confirmationis idem Robertus Wright avus  
 de interesse prædicti termini, de & in prædicta  
 medietate terrarum dominicalium prædict' cum perti-  
 nentiis in forma prædicta dimiss. possession', præfato-  
 Roberto avo de prædict' interesse termini prædict'

de



de & in medietat' prædict' terr' dominicalium prædict' cum pertinentiis in forma prædict' dimiss. possession' existen', idem Robert' Wright avus 14. die Augusti, anno domini millesimo quingentesimo quinquagesimo octavo apud Eastmeon prædictam condidit Testamentum & ultimam voluntatem suam in scriptis. Et per idem Testamentum suum constituit & ordinavit Margaretam tunc uxorem ejus & Nicholaum Wright filium suum juniores fore executores suos Testamenti illius. Et per idem Testamentum suum dedit & legavit totum interesse suum prædict', de & in medietate prædict' terr' dominicalium prædictarum sic ut præfertur dimiss. cum pertinentiis tunc ventur' cuidam Edward' Wright seniori filio prædicti Roberti avi, Et postea præfatus Robert' Wright avus apud Eastmeon prædictam obiit de interesse suo prædicto, de & in tenementis prædictis cum pertinentiis præfato Robert' Wright avo in forma prædicta dimiss. possession', post cujus mortem præfata Margareta & Nicholaus onus executionis Testamenti illius prædict' apud Eastmeon prædictam super se acceptaverunt, iidemque Executores apud Eastmeon prædictam eidem Edward' Wright consensum suum dederunt, quod præfatus Edward' Wright haberet & gauderet sibi & assignatis suis interesse prædictum prædicti termini annorum, de & in medietat' prædict' terr' dominicalium prædict' cum pertinentiis præfato Robert' Wright avo in forma prædicta dimiss. virtute cujus idem Edwardus fuit de interesse illo termini prædict' possession'. Et sic inde possession' existen' idem Edwardus 10. die Julii, anno domini millesimo quingentesimo sexagesimo tertio, apud Eastmeon prædictam condidit Testamentum & ultimam voluntatem sua in scriptis. Et per idem Testamentum suum constituit & ordinavit Agnetem tunc uxorem suam fore solam executricem suam Testamenti illius. Et per idem Testamentum suum dedit & legavit totum interesse suum prædictum de & in medietate prædict' terr' dominicalium prædict' sic ut præfertur dimiss. cum pertinentiis prædicto Robert' Wright modo queren' uni filiorum ipsius Edwardi. Et postea præfatus Edward' Wright apud Eastmeon prædict' obiit de interesse suo prædict' de & in medietate prædict' terrarum dominicalium prædict' cum pertinentiis in forma prædict' dimiss. possession', post cujus mortem præfata Agnes onus executionis Testamenti prædicti Edwardi apud Eastmeon prædict' super se acceptavit, eademque executrix apud Eastmeon prædictam eidem Robert' consensum dedit, quod ipse idem Robertus Wright haberet & gauderet sibi & assignatis suis interesse termini prædicti

de & in præd' medietate terrarum dominicalium præd' cum pertinentiis in forma prædict' dimiss. virtute cuiusdem Robertus Wright modo querens fuit de interesse termini præd' de & in medietate præd' terrarum dominicalium præd' cum pertinentiis possessionat' usque crastin' festi sancti Michaelis Archangeli, anno domini millesimo quingentesimo septuagesimo quinto, quo quidem crastino præd' festi sancti Michaelis Archangeli, anno domini millesimo quingentesimo septuagesimo quinto supradicto, idem Robertus Wright modo quer' in præd' medietat' terrar' dominicalium præd' cum pertinentiis intravit, & fuit inde possessionat', Et sic inde possessionat' existens, eandem medietat' cum pertinen' habuit, tenuit, & occupavit, ac modo habet & occupat, & habere & occupare debuit & debet, de & a solutione decimar' quarumcunque de, in, vel super medietat' præd' terr' dominicalium præd' cum pertin', seu aliqua inde parcell' annuatim quovismodo crescent, continen', renovan', sive provenien' occasione præd' superius in hac parte allegat', penitus exonerat', acquierat', immun', & privilegiat', ratione prescription' & privileg' præd'; Cumque per statutum in Parlamento domini Ed. nuper Regis Angliæ sexti tent' apud West' in Com' Midd' 4. die Novembris, anno regni sui secundo, inter alia inactitat' existit autoritate Parlamenti illius, quod nulla persona vel personæ sectaretur vel sectarentur, aut aliter compellaretur vel compellarentur reddere, dare, vel solvere aliquas decimas pro aliquibus maneriis, tenementis, vel Hæreditamentis quæ per leges & statut' hujus Regni Ang' vel per aliqua privilegia sive prescriptionem non fuerunt onerabilia cum solutione aliquarum hujusmodi decimarum, vel quæ exonerat' fuerunt per aliquam composition' realem, prout Actum illum inter al' plenius liquet & apparet: præd' Nic. Wright in vita sua prætenden' se fore firmatum Rectoriæ Ecclesiæ parochialis præd', prætextu & virtute cujusdam dimissionis sibi inde 10. Maii, anno regni Reginæ dominæ Reginæ nunc 32. per Thomam permissionem tunc Episcopum Winton' pro termino viginti & octo annorum fier' supposit', ac ea occasione falso supposit' decimas quascunque in & super prædict' medietat' præd' dominical' præd' cum pertin' præf. R. Wright avo, in forma prædict' dimiss. provenien' & conting' eidem præf. Wright virtute dimissionis præd' sibi in forma prædicta fieri supposit' spectare & pertinere, ubi revera Robertus modo querens medietatem præd' terrarum dominicalium præd', virtute dimissionis præd' præf. Roberto Wright avo in forma prædict' fact', ac ratione immunitatis

medietatis privileg' & actus præd' superius specificat', ab  
 nat', acquirit' inatam' & privilegiat' de & a solutione  
 decimarum quorumcumque super inde crescen', habere, ve  
 nire, & gaudere debuit, durans' termino prædicto præfatus  
 Roberto Wright avo in forma præd' concess', præmissa  
 non ignorant, machinans dictam dominam Regiam suam  
 & Coronam suam Regiam exhereditare, cognitionemque  
 placit' quæ ad dictam dominam Regiam nunc & Cor  
 nam suam Regiam & non ad Curiam Christianitatis per  
 tinet ad aliud examen in Curia Christianitatis trahere su  
 ponens Indentur' dimissionis præd' præfato Roberto Wright  
 avo in forma præd' fact', & scriptum confirmationis præd'  
 necnon statum ipsius Roberti modo querens' præd' de & in  
 medietat' præd' terr' dominicalium prædictarum cum per  
 tinentiis præfato Roberto avo de decimis, præd' in forma  
 prædicta exonerat' habit' & fact' fore vacuum, & in lege  
 valid': ubi revera Indentura dimissionis & scriptum confir  
 mationis ill', ac etiam status ipsius Roberti modo querens'  
 præd' de & in medietate prædicta terr' dominicalium præ  
 cum pertinentiis, præfato Roberto avo in forma prædicta  
 dimiss'. sicut præfertur de decimis exonerat' bona, valida  
 & effectual' in lege existunt, ac ubi revera dimissio ill'  
 præfato Nicholao in form' præd' fieri allegat' si quæ fuerit  
 penitus vacua & insufficiens in lege quoad aliquas decimas  
 de, in, & super medietat' præd' terrarum dominicalium  
 prædictarum crescen' sive renovan' existit eundem Robertum  
 Wright, modo quer' in Curia Christianitatis coram ven  
 rabili & egregio viro magistro Willihelmo Awbrey legum  
 Doctore Curie audien' Cantuar' causarum & negotiorum  
 auditorum legitime deputat', de & pro subtractione & non  
 solutione decimarum tritici, hordei, pisarum & avenarum  
 de, in, & super prædicta medietat' terrarum dominicalium  
 præd' anno domini millesimo quingentesimo nonagesimo  
 crescen', renovan', provenien', & contingen', necnon de  
 pro subtractione & non solutione decimarum Lanæ & A  
 norum ex ovibus ipsius Roberti Wright modo querens'  
 de, in, & super præd' medietate terrarum dominicalium  
 præd' anno domini supradicto custodit' nasc' & proveni  
 necnon decimarum pomorum ipsius Rob. Wright modo querens'  
 de, in, & super præd' medietat' terr' dominicalium præd', an  
 dom' supradic' crescen' nasc' & proven' 8. die Octobris, an  
 regni dictæ dom' Reg' nunc 32. apud Eastmeon præd' in co  
 præd' traxit in placitum; prædictusq; Nicholaus eund' Robertum



modo quer' in cur' Christianitatis præd' coram præf. Ju-  
dice spirituali occasione præd' comparere & eidem Nicho-  
lo de & in præmissis respondere eo modo validat' in  
Indentur' dimission' præd' per præfatum Stephanum  
super Episcopum prædictum in forma prædicta fact' ac  
confirmationem prædict' necnon statum ipsius Rob' modo  
quer' prædict' de & in prædict' medietat' terr' domina-  
cium præd' cum pertinentiis præfato Roberto Wright avo  
in forma præd' dimis. ac decim' inde provenien' in cur'  
Christianitar' ill' trahere & terminare causare min' juste astringi-  
tur, quod quidem placitum per appellationem in hac part'  
habita & fact' a prædict' curia audien' Cantuar' coram  
venerabil' & egregiis viris Roberto Forthe, Thoma Binge,  
Johanne Lloyd, Thoma Legge, & Richardo Swale legum  
doctoribus Judicib' in hac parte delegat' debite remot' fuit  
in cur' Christianitatis coram eisdem Judicibus delegat'  
et eorum aliquo apud Eastmeon prædict' adhuc pendet in-  
decisum, ac licet idem Rob. modo quer' Indentur' dimissio-  
nis præd' ac scriptum confirmationis præd' ac statum ip-  
sius Roberti modo quer' prædict' de & in prædictam me-  
diatatem terr' domicalium præd' de decimis prædictis exo-  
nerat' cum pertinen' præfati Roberto Wright avo infor-  
ma præd' dimis. ac aliam materiam superius in hac part'  
content' tam in præd' cur' Christianitatis coram præf. Wil-  
helmo Awbrey Judice spirituali antedicto quam in præ-  
dicta curia Christianitar' coram Judicibus delegat' antedict'  
in exoneratione sua in præmis. sepius ostendit placitavit  
allegavit, ac sigillationem & deliberationem Indentur'  
dimissionis & scripti confirmationis præd' ac resid' mater'  
in hac parte content' ex part' ipsius Rob. Wright modo  
quer' in præmissis in hac parte allegat' secundum legem ter-  
re hujus Regni Angliæ inevitabili veritate & testimonio  
probare obtulit, dictus tamen Judex cur' audienc' prædict'  
prædict' Judices delegat' in præd' cur' Christianitatis  
coram eis placitum allegationem & probationem illam ad-  
mittere penitus recusaverunt & eorum quilibet recusavit;  
posteaq; appellum prædictum sic penden' in præd' cur' Chri-  
stianitatis coram Judic' delegat' antedict', prædict' Nicho-  
lo Wright apud Eastmeon prædict' condidit Testament'  
ultimam voluntatem suam in scriptis, & inde Jo. Wright  
executorem suum testamenti illius constituit & ordinavit,  
postea ibidem obiit, post cujus mortem præd' Joh. Wright  
executionis testamenti præd' ac prosecutionem appelli  
prædicti in causa præd' super se suscepit; Posteaq; prædict' J.  
Wright executor antedictus eundem Rober. modo quer' in  
prædict' cur' Christianitatis coram præf. Judicibus delegat'

apud Eastmeon prædict' occasione præd' comparere minus  
 juste astrinxit, ac eundem Robert. modo quer' de & in præ-  
 missis condemnare, ac ad decimas præd' in prædictis sepe-  
 ralibus cur' Christianitatis in forma præd' petit' ei solvend'  
 compellere per definitivam dictæ cur' delegat' sentenc' tot-  
 tis suis viribus adhuc conat' & indies machinatur; Ac li-  
 cet breve dictæ dominæ reginæ de prohibitione præf. Judi-  
 cibus delegat' ac aliis Judicibus in ea parte competen-  
 duodecimo die Jul', anno regni dictæ dominæ reginæ nunc  
 tricesimo septimo apud Eastmeon prædictam in contrarium  
 inde direct' & deliberatum fuit, idem tamen Johan' Wright  
 placitum prædictum post prohibition' regiam prius in contra-  
 rium inde in forma prædict' direct' & deliberat', scilicet primo  
 die Octob. anno regni dictæ dominæ reginæ nunc trice-  
 simo septimo apud Eastmeon prædict' in com' præd' ulte-  
 rius prosecut' fuit, & in placito illo processit dicto breve  
 dictæ dom' reginæ de prohibitione præf. Judic' spiritual'  
 prius in contrarium inde in forma prædicta direct' & de-  
 liberat' in aliquo non obstant' in dictæ domin' reginæ nunc  
 contemptum & ipsius Roberti modo quer' dampnum preju-  
 dicium depauperationem & gravamen manifest', ac contra-  
 form' & effectum præscriptionis privileg' & actus prædictor'  
 unde idem Robertus modo quer' dicit quod ipse deterio-  
 rat' est & dampn' habet ad valentiam quadraginta mar-  
 car', & inde tam prædicta domina Regina quam pro seip-  
 so produc' sectam, &c. Et modo ad hunc diem scilicet  
 diem Mercurii prox' post Quinden' Paschæ isto eodem ter-  
 mino, usque quem diem prædictus Johannes Wright ha-  
 buit licentiam ad billam prædict' interloquendi, Et tunc  
 ad respondend', &c. coram domina regina apud Westm'  
 venit tam prædictus Robert. Wright per attornat' suum  
 prædictum, quam prædictus Johannes Wright per Step-  
 hanum Worley attorn' suum, & idem Johannes defend' vi-  
 & injur' quando, &c. Et omnem contemptum & quicquid  
 &c. Et dicit quod ipse non prosecut' fuit placitum præ-  
 in cur' Christianitatis præd' post prohibitionem regiam  
 ei prius in contrar' directam & deliber' modo & for-  
 prout præd' Rob. Wright qui tam, &c. superius vers'  
 eum querit'. Et de hoc pon' se super patriam, Et præ-  
 dict' Robertus qui tam, &c. similiter, &c. Sed pro Con-  
 sultatione in hac parte habend' idem Johann' protestan'  
 non cognoscendo aliqua per præd' Rob. superius allegat' fuisse  
 vera, pro placito idem Jo. dicit quod bene & verum est quod  
 præd' Rob. in præd'. Cur' Christianitatis coram præfat. Judi-  
 cibus delegat' ostendebat placitabat & allegabat quod præ-  
 Steph. nuper Episcopus Winton' præd' quarto die Jul' a



no tricesimo octavo supradicto fuit seifitus de præd' manerio de Estmeon cum pertinen' in prædict' Comitatu South' unde prædictum capitale messuagium cum pertinen' vocat' the Site of the Manor of Eastmeon, ostingent' acree terræ, quinquagint' acr' prati, mille acr' pasturæ, & quadringent' acr' bosci, cum pertinen' in Estmeon præd' existen' terr' dominical' maner' præd' adtunc & a toto tempore præd' fuerunt parcel', ac etiam de & in prædict' messuagio cum pertinen' in Estmeon præd' existen' domo mansional' maner' præd' in dominico suo ut de feod' in jure nuper Episcopat' sui præd'; Ac quod idem Stephanus & omnes prædecess. sui Episcopi Episcopatus præd' pro tempore existen' seifit' de manerio præd' & cæter' premissi. cum pertinen' a toto tempore præd' pro se firmar' & tenentibus suis inde & cujuslibet inde parcella pro termin' annor' seu ad volunt' tenuissent & gavisi fuissent eisd' exonerat' acquietat' immun' & privilegiat' de & a solutione quarumcunq; decimar' de, in vel super præd' capitali messuagio & terr' d'nicalibus præd' cum pertinen' quamlibet inde parcellam annuatim quovismodo per totum tempus prædictum crescen' contingen' & renovan' sive provenien', quodq; præfat. nuper Episcopus de capital' mess. præd' & terris dominicalibus præd' cum pertinen' in forma præd' seifit' existen', ac eadem habens & tenens exoner', acquietat', immun', & privilegiat' de & a solutione decimar' quarumcunq; in vel super capital' messuagium præd' & cætera præmissa cum pertinen' seu aliquam inde parcell' crescen', renovan', seu quoquo modo contingen' præd' quarto die Julii anno regni prædict' nuper regis Henrici octavi tricesimo octavo supradict', apud Estmeon præd' per præd' Indenturam suam sigillo suo Episcopali sigill' geren' dat' eisdem die & anno dimisit præf. Rob. Wright avo præd' Robert. medietatem terrarum dominicalium præd' cum pertinen' per nomen omnium terrar' d'nicalium manerii de Estmeon præd' de antiquo pertinen' cum omnibus domibus, stabulis, horreis, & edific' super medietat' præd' tunc & ab antiquo scituat', jacen', & existen' cum pertinen', quæ quidem medietas adtunc jacuit in campis ex parte Australi præd' villæ de Estmeon prædict' Habend' & occupend' medietatem illam cum pertinen' præfat. Roberto Wright avo & assignatis suis a præd' festo sancti Michaelis Archangeli quod tunc esset in anno domini millesimo quingentesimo septuagesimo quinto, usque finem termini quadraginta annorum extunc proxim' sequent' & plenarie complend'; Ac quod postea scilicet præd' vicesimo die Jul' anno 38: supradicto præd' Willihelmus Kingsmil tunc Decanus prædict' Ecclesiæ Cathedralis Sanctæ Trinitatis Winton', & Capitul'



pitul' ejusdem loci apud Winton' prædict' in domo capitulari sua ibidem per scriptum suum prædict' sigillo capitulari suo prædicto figillat' in vita prædicti nuper Episcopi, ac in vita præd' Ro. Wright avi confirmaverunt, & ratificaverunt, ac quod idem Rober. Wright virtute dimissionis & confirmationis præd' fuit de interesse termini prædicti de & in medietat' præd' cum pertinent' possessionat', & sic inde possessionat' existens præd' quarto decim' die Aug. anno d'ni millesimo quingentesimo quinquagesimo octavo supradicto, apud Eastmeon præd' condidit testamentum suum in scriptis, & per idem testamentum suum constituit prædictos Margar' & Nicho. Wright executores suos, & per idem testamentum suum dedit & legavit totum interesse suum prædict' de & in medietate præd' cum pertinent' præd' Edwardo Wright filio præd' Roberti avi, & postea apud Eastmeon præd' obiit de interesse suo præd' in forma præd' possessionat', post cujus mort' præd' Edwardus per assensum executorum præd' fuit de interesse præd' termini annor' de & in medietat' præd' cum pertin' possessionat', ac quod idem Edwardus sic inde possessionatus existens præd' 11. die Jul', anno domini millesimo quingentesimo sexagesimo tertio supradicto, apud Eastmeon præd' condidit testamentum suum in scriptis, & per idem testamentum suum constituit quandam Agnetem tunc uxorem ejus executricem suam testamenti sui præd' & per idem testament' suum dedit & legavit totum interesse suum præd' de & in medietat' præd' cum pertin' præd' Roberto Wright modo quer', & postea ibid' obiit de interesse suo præd' de & in medietat' præd' cum pertin' in form' præd' possessionat', ac quod præd' Robertus modo quer' per consensum præd' Agnetis onus executionis testamenti prædicti super se suscepit fuit de interesse termini præd' de & in medietat' prædict' cum pertin' possession' usq; festum sancti Michaelis Archangel. anno d'ni millesimo quingentesimo septuagesimo quinto, immediatate post quod quidem festum idem Robertus in medietat' præd' cum pertin' intravit & fuit inde possessionat', ac quod idem Rober. sic inde possessionat' existens eadem tenementa cum pertin' similiter habuisset & occupasset ac habere & occupare debuit de & a solutione decimar' quarumcunq; de, in vel super medietatem præd' cum pertin' seu aliquam inde parcellam annuat' quovis mod' crescen' contingen' renovan' sive provenien' occasione præd' superius allegat' penitus exonerat' acquietat' immunit' & privilegiat' ratione præscriptionis & privileg' præd' ac vigore statuti præd' in prædicto Parlamento præd' nuper regis Edwardi sexti apud West' prædict' prædicto quarto die Novemb' anno regni sui secundo de solutione decimar' tunc edito

prout præd' R. Wright modo quer' superius allegavit : Sed idem J. Wright ulterius dicit quod præd' Judices delegati in præd' cur' coram eis placitum & allegationes præd' R. Wright modo quer' præd' allocaverunt ac probationes inde per eundem Robertum oblat' acceptaverunt & admitterunt, absq; hoc quod præd' Judices delegati in prædict' cur' Christianitatis coram eis placitum allegationes & probationes præd' R. Wright modo quer' præd' admittere recusaverunt, modo & forma prout præd' Rob. modo quer' superius allegavit, & hoc paratus est verificare, unde petit Judicium & breve dictæ dominæ Reginæ de Consultatione, sibi in hac parte concedi, &c. Et præd' R. Wright modo quer' dicit quod per aliqua per præd' J. Wright superius placitando allegat' idem Johannes breve dict' dominæ Reginæ de Consultatione habere minime debet, Quia dicit quod placitum præd' per ipsum Johannem modo & forma præd' superius placitat' materiaq; in eodem content' minus sufficien' in lege existit ad præd' breve dict' dominæ Reginæ de Consultatione impetrand', ad quod idem Robertus necesse non habet nec per legem terræ tenetur aliquo modo respondere, unde pro defectu sufficien' responsionis in hac parte idem Robertus petit judicium & dampna sua præd' occasione præd' sibi adjudicari, &c. Et præd' J. Wright dicit quod placitum præd' per ipsum Johannem modo & forma præd' superius placitat', materiaq; in eodem content' bona & sufficien' in lege existunt ad præd' breve dictæ dominæ Reginæ de Consultatione impetrand', quod quidem placitum materiamq; in eodem content' idem Johann' paratus est verificare & probare prout Cur', &c. Et quia præd' Robertus ad placitum illud non respond' nec illud hucusq; aliquialiter deducit, idem Johannes ut prius petit Judicium & breve dict' dominæ Reginæ de Consultatione in hac parte sibi concedi, &c. Et quia Cur' dominæ Reginæ hic de judicio suo de & super præmissis reddendo nondum advisatur, dies inde dat' est partibus præd' coram domina Regina apud West' usque diem proxim' post de Judicio modo & super præmissis audiendo, &c. Eo quod Cur' dominæ Reginæ hic inde nondum, &c.

## Pasch. 38 Eliz.

*The Bishop of WINCHESTER's Case.*

(A) Ch. El. 475.  
511. 2 Rol. 653.  
11 Co. 14. b.  
Godb. 183. Moor  
423. 531.

(B) Doctrin. Pla-  
cit. 193.

IN a Prohibition between Robert (a) Wright Plaintiff, and John Wright Defendant, which began Pasch. 38 Eliz. Rot. 628, the Case was such; the Plaintiff shewed, That Stephen Gardiner, Bishop of Winchester, the 4th Day of July, 38 H. 8. was seized of the Mannor of *Eastmean* in *Eastmean* in the County of *Southampton*, in the Right of his Bishoprick; and that the said (b) Bishop, and all his Predecessors of the said Bishoprick seized of the said Mannor had holden and enjoyed the Scite of the said Mannor, and all the Demesns of the said Mannor, *a Tempore cuius, &c.* for him, his Tenants and Farmers, for Years, or at Will, *exonerat' acquietat' & privilegiat' de & a solutione decimarum quarumcunque de, in vel super prad' scit' & terr' dominic' & qualibet seu aliqua inde parcel annuatim quovismodo per totum tempus prad' crescent', contingent', sive renovant'*. And the Plaintiff conveyed to himself an Interest for Years in Parcel of the Demesns of the said Mannor, by the Demise of the said Bishop; And that the Defendant being Farmer of the Rectory of *Eastmean*, had libelled against him for Tithes growing within Parcel of the Demesns of the said Mannor, before the Judges Delegates, and although the Plaintiff had shewed all the Matter, and pleaded the same before them and offered with inevitable Proof to prove it, yet *pradicti Judices delegati in pradict' Cur' Christianitatis coram eis placitum allegationes & probationes pradict' Roberti Wright admittere recusaverunt*. The Defendant to have a Consultation, confessed that the said Plaintiff had alledged all the Matter aforesaid before the Judges Delegates, and that the Judges Delegates allowed the Plea and Allegation of the Plaintiff, and admitted him to his Proof thereof, *absq; hoc quod prad' Judices delegati in Curia*



*Curia Christianitatis coram eis placitum allegationes & probationes predicti Roberti Wright admittere recusaverunt.* And upon this Plea the Plaintiffs Council did demurr in Law; and in this Case three Points were moved: 1. Whether the said Prescription for discharge of Tithes, was good or not.

2. Whether the Plaintiff, being a Lay-man, should take Benefit thereof. 3. Whether the said traverse was good or no. And as to the first Point, three Things were considered:

1. Who were by the Common Law capable of Tithes in Pernancy, and who not. 2. Who was capable of a Discharge of Tithes at the Common Law, and who not. 3. How he who was capable of a Discharge, might be discharged of Tithes, *scil.* either by Prescription, or by Composition, &c.

As to the first it was resolved, That none by the Common Law had Capacity to take Tithes, but only spiritual Persons, or a mixt Person, and regularly no meer Lay-man was at

the (a) Common Law capable of them, unless in special Cases; for no Layman but in special Cases, could (b) sue for them at the Common Law in the spiritual Court, *scil.* for the Subtraction of them. See the Books in 7 E. 3. 5.

11 Aff. 9. 44 E. 3. 5. b. 10 H. 7. 18. a. & 7 E. 6. (c) Dyer 84. and the Books in 43 E. 3. 34. a. & 44 E. 3. 39. a. b. that a Farmer of a Parson may sue for Tithes; but it appears that such Farmer was a (d) spiritual Man, as Vicar, &c.

And so it was said by some are all the other Books in 31 H. 6. 11. a. 35 H. 6. 39. a. b. 2 E. 4. 15. a. b. 6 E. 3. 4. a. b. 12 H. 7. 24. b. (in which in truth there are but Opinions) to be intended: And if the Common Law had generally enabled a Lay-man to be capable of Tithes, the Common Law would

have given him Remedy for the Recovery of them; but regularly a (e) Lay-man had no Remedy for the Subtraction of Tithes, till the Statute of (f) 32 H. 8. cap. 7. But see 22 Aff. 75. that the King was capable of Tithes at the Common Law, for he was (g) *persona mixta*, and his (h) Patentee also by his Prerogative, as it there appears.

As to the second Point it was resolved, That a meer Layman who was not (i) capable of Tithes in Pernancy, was notwithstanding capable of a (k) Discharge of Tithes at the Common Law in his own Land, as well as a spiritual Man; for by the Common Law, the Parson, Patron, and Ordinary might (l) have discharged a Parishioner of Tithes in his Land, &c. or the Parishioner might have (m) given Part of his Land to the Parson for a discharge of Tithes in the Residue. And for Proof thereof see the Book in 8 E. 4. 14. a. b. and Register 38. where it appears that a Layman might be

discharged of Tithes at the Common Law; but a Layman might be discharged of Tithes at the Common Law by Grant, or Composition, as it appears in the said Books, but not by Prescription to be discharged of Tithes; for it is commonly said in our Books, that he may prescribe

(a) Cr. El. 512.

(b) Co. Lit. 159.

2. 5 Co. 161. 2.

Cawdry's Case.

Br. diſmes 51.

(c) Cr. Jac.

438. Moor 531.

Dyer 84. Pl. 84.

Postea 44. b.

(d) Postea 45. a.

(e) Cr. El. 512.

(f) Co. Lit.

159. a. 13 Co.

15. 1 Mod. Rep.

260.

(g) Cr. Car.

423. 1 Rol. 655.

657. Davis 4. 4.

10 H. 7. 18. a.

Cawly 6. Cr. El.

599. 785. 5 Co.

28. a. Cawdry's

Case. 11 Co. 70.

2. 13 Co. 17.

Hob. 297.

1 Jones 387.

(h) Cr. Car. 94.

423. Cr. El. 512.

785. 1 Rol. Abr.

655. Heil 60.

1 Jones 387.

Nov 132.

(i) 1 Jones 184.

(k) Cr. El. 512.

(l) Cr. Jac.

455. Hob. 297.

(m) F. N. B. 42.

G. Hob. 297.

Cr. El. 512. Cr.

Car. 423.

1 Jones 368, 369.

Moor 933.

# WINCHESTER's Case. PART II

(a) Hob. 297.  
Davis 6. b.  
13 Co. 16.  
1 Jones 369.  
1 Rol. 653.

(a) *in modo decimandi*, but not *in non decimando*, and the Reason thereof is, because he is not, but in special Cases capable of Tithes at the Common Law, and therefore without special Matter shewed, it shall not be intended that he hath any lawful Discharge. And for this Reason, in Favour of Holy Church, although it might have a lawful Beginning, the Law will not suffer such Prescription in this Case, to put it to the Trial of Laymen, who will rather strain their Consciences for their private Benefit, than yield to the Church the Duties which belong to it. And the Law had great Policy therein, for the Decay of the Revenues of Men of Holy Church, in the End, will be the Overthrow of the Service of God, and of his Religion. And therefore it is recorded

(b) 11 Co. 70. 2.

in History, That there were (amongst others) (b) two grievous Persecutions, one under *Dioclesian*, the other under *Julian*, surnamed *Apostata*; for it is recorded, That one of them intending to have rooted out all the Professors and Preachers of the Word of God, *occidit omnes Presbyteros*, but notwithstanding that, Religion flourished, for *sanguis Martyrum est semen Ecclesie*; and yet the same was a fearful and grievous Persecution: But the Persecution under the other was more grievous and dangerous, because (as the

(c) 1 Rol. Rep.  
164. 11 Co. 70. 2.  
Hob. 308.

(d) Hob. 297.

(e) 1 Rol. 653.

11 Co. 14. b.

Cr. Car. 423.

Hob. 297. Postea

48. b.

(f) Hob. 296.

Cr. Eliz. 511.

Moor 436. 530.

1 Jones 368. 369.

44 E. 3. 5. b.

Br. dismes 1. 21.

10 H. 7. 13. 2.

Dyer 84. pl. 84.

Godolph. A-

bridg. 354. 7 E.

3. 5. per Parn,

44. Ass. pl. 25.

Cr. Jac. 454.

559. Selden de

decimis 292.

2 Inst. 641. 646.

Degg's Parl.

219.

(g) 2 & 3 E. 6.

c. 13.

(h) Dyer 277.

pl. 60. 2 Brown.

25. Moor 532.

2 Inst. 652.

2 Co. 47. b.

Cr. El. 579.

Palm. 119.

1 Leon. 312.

Cr. Jac. 454. 559.

(i) Dyer 349.

pl. 16. Postea 48.

2. Cr. El. 511.

13 Co. 18. Hob.

44 Palm. 119.

History saith) *ipse occidit (c) Presbyterium*, for he robbed the Church, and spoiled spiritual Persons of their Revenues, and took all from them whereon they might live; and thereupon in short Time did follow great Ignorance of the true Religion and Service of God, and thereby great decay of the Christian Profession; for none will apply themselves, or their Sons, or any other who he hath in Charge, to the Study of Divinity, when they shall have, after long and painful Study, nothing to live upon. And it was said, That if a Prescription in *non decimando* should be suffered, the (d) Church would rather lose than gain in these Days. And for this Reason such Prescription was not allowable. But a spiritual Person who was capable of Tithes at the Common Law in Perpetuity, may prescribe to be (e) discharged of Tithes generally; for as he may prescribe to have a Portion of Tithes in the Land of another, so he may prescribe to discharge his own Lands of Tithes; for it is commonly said in our Books, That before the Council of *Lateran*, (f) every Man might have given his Tithes to any Ecclesiastical Person he would, and that appears by the Books aforesaid. And note, It is recited by the Statute of (g) 2 E. 6. cap. 13. that Land may be discharged of Tithes by Prescription, but that cannot be in Case of a Layman, *Ergo* it ought to be in Case of a spiritual Man. *Vide* 10 Eliz. Dyer 277. The (h) Orders of the *Cistercians*, *Templars*, and *Hospitalarii*, were discharged of Tithes *sub modo*, *scil. quamdin propriis manibus excoluntur* &c. and 18 Eliz. Dyer (i) 340. And as to the second Point, the same dependeth upon the first, for if the Lands of the Bishop



were discharged in his Hands absolutely by Prescription, when the demising thereof to a Layman, cannot make the same (a) chargeable which was discharged before; and in that it may be more beneficial to the Bishop, for in respect of that he might reserve the greater Rent, &c. And as to the third Point, it was resolved, That the traverse was insufficient, for as it is said in (b) 8 E. 4. 14. the spiritual Court will not allow any Plea in discharge of Tithes, and therefore the Refusal in such Case, is not material, for the Party may have a Prohibition before any such Plea pleaded by him in discharge of Tithes, and therefore in such Cases the Allegation of the Refusal of the Ecclesiastical Judge, are rather Words of Course than of Effect and Substance; but in some Case the Refusal is (c) traversable, as it was adjudged M. 30 & 31 Eliz. in this Court, between (d) *Morris* and *Eaton*, where the Case was, That *Morris* was sued by *Eaton* in the Spiritual Court for Tithes; *Morris* alledged there, That *Eaton* had not read the Articles according to the Statute, and that the Ecclesiastical Judge did refuse to allow the same; and this Refusal was traversable by the Judgment of the Court, for otherwise, upon such Surmise, all Matters might be prohibited in the Spiritual Court, although the Spiritual Judge do all that belongeth to Law and Justice. And in the same Case, the Party grieved may have Remedy by his Appeal; but in the other Case of discharge of Tithes, or *de modo Decimandi*, the (e) Judges of our Law well know, that the Ecclesiastical Judges will not allow such Allegation, and so is the Difference. Note Reader, A Man may prescribe, That he and all those whose Estate he hath in the Mannor of *Dale*, in *Dale a tempore cujus*, &c. have paid to the Parson of *Dale* for the Time being, a certain Pension yearly, for Maintenance of Divine Service there, in Contentation of all Tithes renewing or arising within the same Mannor: And further prescribe, That he, and all those whose Estate he hath in the said Mannor, Time out of Mind, have used in respect of the said Pension so paid the Parson, to have all the Tithes accruing and arising within the said Mannor, or any Part thereof, *scil.* of all Lands holden of the said Mannor, or Parcel thereof: And such Prescription was adjudged good in the King's Bench, M. 39 & 40 Eliz. Rot. 109. in an Action upon the Case between *Pigot* (f) and *Hern*, in which Case two Points were resolved for good Law. That in such special Case, a Lay Person, Owner of the said Mannor, shall sue for the Tithes upon the special Matter aforesaid in the Spiritual Court, for it shall be intended at the Beginning, the Lord was seized of the whole Mannor before the Tenancies were derived thereout, and then by

(a) Cr. El. 785.  
Cro. Car. 94.  
422, 423. 1 Rol.  
633. Antea 44.  
a. Hob. 42. 309.  
Yelv. 2. 3. Noy  
132. Moor 618.  
619. 1 Jones  
376. Godb. 183.  
(b) Hard. 406.  
Cro. El. 511.  
512. Dyer 79. pl.  
49. 13 Co. 18.  
38, 46.

(c) Cro. El. 511.  
(d) 6 Co. 29. b.  
Cro. El. 511.  
680. Hetl. 87.  
Hob. 168.

(e) Cro. El. 511.

(f) Cro. El.  
599. 785. Cro.  
Jac. 501. 1 Sand.  
142. Lane 17.  
Moor 483. 589.  
Hob. 42. 297.  
Degg. Parl. 224.



by Composition or other lawful Means, the Lord should have all the Tithes within the Mannor for the said Pension paid to the Parson; and the Law intendeth, that at the Beginning it was for the Maintenance of Divine Service, and *pro bono Ecclesie*, the Reason of which Intendment is the continual Usage, *a tempore cuius, &c.* It was resolved, That upon this special Matter alledged, a Man may have Tithes as (a) appurtenant to a Mannor; for he prescribeth by a *Que* Estate in the Mannor, and therefore cannot have them in gross. But it was adjudged in (b) *Winchcomb's Case*, in this Court, in a Prohibition *Hill. 35 Eliz.* That a Man cannot prescribe generally in him and all those whose Estate he hath in such Mannor, to have any Tithes appertaining to the same; for without such special Matter shewed, Tithes which are spiritual Things, and due *jure Divino*, for the Substraction of which, Remedy lieth only in the Spiritual Court, and no Remedy at the Common Law, cannot be Parcel or appurtenant to a Mannor, or any other temporal Inheritance. And the Attorney General was of Council with the Plaintiff, and *Walter* of the *Inner-Temple* with the Defendant.

(a) Cro. El. 599.

(b) Cro. El. 233.  
963.

Trin

*Balser v. Holmes. 2 B & A. 592.*

## Trin. 38 Eliz. Reg.

### *The Archbishop of CANTERBURY's Case.*

IN a Prohibition in the *King's-Bench*, between *Green* and *Balser*, the Case was, There was a religious College in *Maidstone*, to which the Rectory of *Maidstone* was impropriate. And the said College had divers Lands and Tenements within the said Parish of *Maidstone*, and all was given to the King by the Statute of 1 E. 6. And afterwards the Rectory was conveyed to the Bishop of *Canterbury*, and the Lands, Parcel of the Possession of the said College, were conveyed to the Lord *Cobham*; and now the Farmer of the Lord *Cobham* brought a Prohibition against *Balser*, Farmer of the said Rectory, to *Whitgift*, Archbishop of *Canterbury*, and in his Prohibition he alledged the Branch of the Statute of 31 H. 8. concerning discharge of Tithes, and shewed <sup>31 H. 8. cap. 13.</sup> That the Master of the said College was seized of the said Lands, and of the said Rectory, *simul & semel*, as well at the Time of the making of the Act of 31 H. 8. as at the making of the said Act of 1 E. 6. and held them discharged of Tithes; and shewed the said Act of 1 E. 6. by <sup>1 E. 6. cap. 14.</sup> which the said College was given to King E. 6. and thereupon the Defendant did demur in Law. And in this Case divers Questions were moved.

1. Whether the said College came to the King as well by the Statute of 31 H. 8. as by the Statute of 1 E. 6. for if this College came to the King by the Statute of 31 H. 8. then without Question the said Branch of the said Act concerning discharge of Tithes, extends to it: And it was objected by the Plaintiffs Council, That the Words of the said Act are general, *sc. That all Monasteries, &c. Colleges, &c. which hereafter shall happen to be dissolved, &c. or by any other Means*

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*Means come to the King's Highness, &c. shall be vested, deemed, and judged by Authority of this Parliament in the very actual and real Possession of the King, &c.* And when this College came to the King by the Statute of 1 E. 6. it came to the King within these Words of the Act (*by any means*). But it was answered by the Defendant's Council, and resolved by the Court, That that could not be, for (a) several Reasons.

(a) Hob. 310.

(b) Cro. Jac. 58.  
Raym. 62. Hard.  
442. 2 Inst. 137.  
457. 478. 629.  
1 Leon. 277.  
Dyer 109. pl. 38.  
Godb. 395.  
Latch. 85.

1. When the Statute speaks of Dissolution, Renouncing Relinquishing, Forfeiture, giving up, &c. which are (b) inferior Means, by which such religious Houses came to the King, then the said latter Words (*or by any other Means*) cannot be intended of an Act of Parliament; which is the highest Manner of Conveyance that can be; and therefore the Makers of the Act would have put that in the Beginning, and not in the End, after other inferior Conveyances, if they had intended to extend the Act thereunto. But these Words (*by any other Means*) are to be so expounded, *scil.* by any other such inferior Means. As it hath been adjudged, That Bishops are not included within the Statute of 13 Eliz. cap. 10. for the Statute beginneth with (c) Colleges, Deans and Chapters, Parsons, Vicars, and conclude with these Words, *And others having spiritual Promotions*. These latter Words do not include Bishops, *causa qua supra*. So the Statute of West. 2. cap. 41. the Words of which are *Statuit Rex, quod si Abbates, Priores, custodes Hospitalium, & aliarum domorum religiosarum, &c.* These latter Words do not include Bishops, as it is holden 1 & 2 Phil. & Mar. Dyer 100. for the (d) Cause aforesaid.

(c) Goldsb. 171.  
pl. 102. Godb.  
395. 1 Jones 186.

(d) Dyer 109.  
pl. 38. 1 Jones  
185.

2. The said Clause of 31 H. 8. That the said religious Houses shall be in the King by Authority of the said Act; and the Statute of 1 E. 6. enacts, That all Colleges, &c. shall be by Authority of this Parliament, adjudged and deemed in the actual and real Possession of the King, so that the latter Parliament being of as high a Nature as the first was, and providing by express Words, That the Colleges shall be, by Authority of the said Act, in the actual Possession of the King, the said College cannot come to the King by the Act of 31 H. 8. It is said in 29 H. 8. *Parliament & Statutes Br.* (f) Lands be given to Tenant in Tail in Fee, his Issue cannot be remitted, for the latter Act doth take away the Statute *de Dono &c.* 3. The usual Form of pleading of them, which came to the King by the Statute of 1 E. 6. and by the Act of 31 H. 8. do manifest the Law clearly, *scil.* to plead Surrender or Relinquishment, &c. *virtute cuius ac vigore* of the Statute of 31 H. the King was seized, but to (g) plead the Act of 1 E. 6. Chauntries, *virtute cuius ac vigore* of the Statute of 31 H. was never heard or seen, and for all these Causes it was resolved, That this College came to the King by the Act of 1 E. 6. and not by the Act of 31 H. 8.

(e) 4 Inst. 42.

(f) Br. Parliament & Statutes  
73.

(g) Hob. 310.

The 2d Question was, Forasmuch as the said College came to the King by the Act of 1 E. 6. and not by the Act of 31 H.



Whether the said Branch of discharge of Thithes, extends to such Colleges which came to the King by any other Act, and not by the Act of 31 H. 8. and it was objected, That the said Branch should extend to Colleges which came to the King by any other Act, for it was said, That although the Preamble of the said Branch saith, *The late Monasteries, &c.* yet this is not literally to be understood of Monasteries only which were dissolved before the Act, for (*late*) is to be construed according to the Body of the Act, *scilicet* of those which were dissolved before, or which should come to the King afterwards by the said Act, so that when they are dissolved, and in the King by Force of this Act, this Act may call them (*late*) *quod fuit concessum per Curiam*. Also they said, That the Words of the Branch it self are general, *scilicet* any Monasteries, &c. Colleges, &c. without any Limitation, so that they conceived, That the Words of the said Branch made for them, and that this Clause of Discharge should extend to all Monasteries, &c. Colleges, &c. *quacunque*, by what Means soever they came to the King; and they said, That the Intent of the Act was so, for the Intent of the Act was to benefit the King, and to make the Subject more desirous of purchasing them, &c. Against which it was said by the Defendant's Council, and resolved by the Court, That neither the Words, nor the Meaning of the said Branch, did extend to any Monasteries, &c. but to those (*a*) only, which came to the King by the Act of 31 H. 8. for it would be absurd, That the Branch of the Act of 31 H. 8. should extend to a future Act of Parliament, which the Makers of the Act of 31 H. 8. without the Spirit of Prophecy, could have no Foreknowledge of; but this Clause of Discharge of Tithes, shall extend only to those Possessions which came to the King by the same Act. And where it was said, That the first Words of the Branch were general, the same is true, but the Conclusion of that Branch is, *In as large and ample Manner as the late Abbots, &c.* So that (*late*) being so intended, as it hath been agreed on the other Side, *scilicet* only of religious Houses which came to the King by 31 H. 8. It is clear, that that Branch cannot extend to this College which came to the King by the Act of 1. E. 6.

The 3d Question was, admitting that the said College had come to the King by the Statute of 31 H. 8. Whether such general Allegation of Unity of Possession of the Rectory and of the Lands in it, was sufficient; and it was resolved by the Court, That it was not sufficient; for no Unity of Possession shall be sufficient within the same Act, but a lawful and perpetual Unity of Possession. Time out of Mind, as it was adjudged M. 34 & 35 Eliz. in a Prohibition between (*b*) *Va-*

(*a*) 1 Jones 4.  
371, 187. Cro.  
Jac. 608. Hob.  
309. Moor 420.

(*b*) 1 Leon 331.  
Lit. Rep. 14.  
Lane 17. Moor  
534. 2 Bulstr.  
20. 240. 2 Bro.  
25. Polk 42. 2.

*antine Knightly*, Esquire, Plaintiff, and *William Spencer*, Esquire, Defendant, where the Case was such, The Plaintiff in the Prohibition shewed, That *Phillip Abbot*, of *Essexham*, and all his Predecessors, Time out of Mind, were seized as well of the Rectory impropriate of

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*Badby cum Newnam* in the County of Northampton, as of the Mannor of *Badby cum Newnam*, in *Badby* aforesaid, in his Demean, as of Fee, in the Right of his Monastery, *final* *semel*, until the Suppression of the same Monastery, *quod* *que ratione inde*, the said Abbot, and all his Predecessors, until the Dissolution of the same Monastery had held the said Mannor discharged from the Payment of Tithes, until the Dissolution of the same House, and shewed the Branch of the Statute of 31 H. 8. concerning discharge from the Payment of Tithes, and conveyed the said Mannor to *Knightly*, and the said Rectory to *Spencer*, who libelled in the Spiritual Court for Tithes of the Demeans of the said Mannor against *Knightly*, who upon the Matter aforesaid brought the Prohibition, and it was adjudged, That the Prohibition was maintainable; For the said Branch of the Act of 31 H. 8. was made to prevent two Mischiefs, one, That otherwise all the (a) Improprations of Rectories to Houses of Religion, had been disappropriate; for if the Body to which the Rectory is appropriated, had been dissolved, the Impropration to such Body had been dissolved also, as appears by 3 E. 3. 21 E. 14. 1. a. 21 H. 7. 4. b. F. N. B. 33. k. l. Another Mischiefe was, That whereas many religious Persons were discharged from the Payment of Tithes, some by their (b) Order, as the *Cistercians*, *Templars*, *Hospitalers*, *St. John's of Jerusalem*, as appears by 10 Eliz. Dyer. 27. Some by Prescription, some by Composition, some by the Pope's Bulls, &c. And the greater Part of religious Houses, as the said Abby of *Evesham* was, were founded before the Council of *Lateran*; and before Time of Memory, it would be infinite, and in a Manner impossible by any Search to find all the Discharges and Immunities which such religious Houses had. And for this Reason also the said Branch was made. And the great Doubt in the said Case, was conceived upon the Word (*Discharge*) for it was said, That (c) Unity of Possession was not any Discharge of Tithes, and by Consequence was not such Discharge as was within the Intent of the said Act. And for the Force of this Word (*Discharge*) 18 E. 3. Bar. 247. 35 H. 6. 10. b. 22 E. 4. 40. b. & 6 H. 7. 10. b. were cited. But as to that, it was resolved by the Court:

1. That the (d) Statute doth not say Discharge of Tithes but Discharge of Payment of Tithes.
2. The Statute doth not say, Discharge of Payment of Tithes absolutely, but as freely as the Abbot, &c. held in the Day of Dissolution, and then this Word (*Discharge*) being referred to a certain Time, may be intended of a Suspension by Unity. As if a Man seized of a Rent disseised the Tenant of the Land, and makes a Feoffment with Warranty, the Feoffee shall (e) vouch as of Land discharged of the Rent, and yet the Rent was but suspended.

(a) Hob. 308.

(b) Hob. 296,  
297. 309. Cro.  
Jac. 454, 559.  
608. Dyer 277.  
pl. 60. Antea  
44. b. Moor  
532. 913. 2 Inst.  
652. Cro. El.  
579. 2 Brownl.  
25. Palm. 119.  
2 Leon. 332.  
Larch. 90, 91.

(c) 11 Co. 10. 2.  
14 b. Moor 30.  
218. pl. 35. 332,  
533, 534.  
1 Jones 3. Hob.  
44, 298. 309, 311,  
32 H. 8. Br. dif-  
fines 17. Dav. 6.  
2. Br. N. C.  
178. Dall. 50.  
pl. 14. 2 Bulstr.  
184. Noy 35.  
132. 1 Leon.  
248. 332. 334.  
335. 4 Leon. 47.  
Cro. Jac. 452,  
453. 608. Dyer  
43. pl. 21. Sav.  
62.  
(d) 11 Co. 14.  
b. Hob. 298.  
(e) 2 Rol. 745.



but every Suspension is a Discharge for a time, and the Discharge being referred to the Time of the Warranty, extends to the Suspension. *Quod vile* 30 E. 3. 30. 3 H. 7. 4. a. 21 H. 7. 9. a. b. F. N. B. 135. c.

3. The Statute saith, *as freely as the Abbot, &c. retained the same.* And it was said, That it was the Intent (a) of (a) Cro. Jac. 559. 11 Co. 14. the King, and of the Makers of the Act, to discharge the Land of Payment of Tithes in such Case of Unity of Possession, being a general Case to (b) induce Purchasers the (b) Bridgm. 34. rather to purchase the Land for greater Prices.

4. For (c) the infinite Impossibility, and the impossible In- (c) 9 Co. 25. a. finiteness as hath been said, all the Discharges which such 11 Co. 14. b. religious Houses had, could not be known; and the same Hob. 298. Construction was made in this Court, *Hill. 24 Eliz.* in a Pro- Bridgm. 34. hibition between (d) *John Rose* and *William Gurling*, for (d) Co. Ent. Tithes in *Flixton* in the County of *Suffolk*. See 18 *Eliz. Dyer* nu. 4.

(e) 349. the Parson of *Peykirk's Case*. And it was likewise re- (e) Antea 44. solved in the said Case of (f) *Knightly*, That nothing could b. *Dyer* 349. be traversed but the Unity, for (g) *ratione inde, &c.* is but pl. 16. Hob. 44. the Conclusion and the Judgment of the Law upon the pre- Palm. 119. Cro. El. 511. 13 Co. 18. (f) Antea 47.

cedent Matter; but it was also resolved, That if before the (g) 11 Co. 10. Dissolution the Farmers of the Demeans had (h) paid Tithes, a. *Hard.* 70. to the Abbot, &c. then the Intendment of the Law by (h) Hob. 298. the Reason of the said Unity of Possession (which ought to 1 Leon. 333. be Time out of Mind) that the Land was discharged of Cro. El. 29. 584. the Payment of Tithes, will not hold Place. For as *Bracton* 585. Moor 530. saith, (i) *Stabitur presumptioni donec probetur in contrarium.* 534. Doct. pla. 251.

but if the Lands were always occupied by the Abbots, or (i) Cro. Jac. 453. 559. 11 Co. 14. b. (j) 4 Co. 71. b. before the Act, although the Land be conveyed to one, and 5 Co. 7. b. *Caw-* the Rectory to another, yet the Land is discharged of the dry's Case. payment of Tithes: And if the Farmers of the Demeans 6 Co. 73. b. had paid Tithes before the Act, the same should be plead- Co. Lit. 373. b. ed by the Defendant in the Prohibition, and Issue thereupon 2 Bull. 314. Hob. 298.

might be taken, as it was in the like Case, *Trin. 38. Eliz.* this Court, between *Edward Grevil Esquire*, Possessor of (k) Moor 528. the Demeans of the Mannor of (k) *Nafing* in the County 529. of *Essex*, Plaintiff, and *Martin Trot*, Proprietor of the Re-

ctory of *Nafing*, Defendant, where against such Unity of Possession in Manner and Form aforesaid, alledged by the Plaintiff in the Abbot of *Walsham* and his Predecessors, &c. the Rectory and Demeans, and with like Conclusion as aforesaid: The Defendant alledged Payment of Tithes by the Farmers of the said Demeans (without any (l) traverse (l) Hob. 298. the Rule of the Court) and Issue was joined thereupon, and it was tried against *Trot*, and therefore the Prohibition stood. And it was likewise resolved, That although the Plaintiff in the Case at Bar alledged, That the Master of the said Colledge, at the Time of the making of the said Act of 1 E. 6. held them dis- charged



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(a.) 1 Rol. 653.  
11 Co. 14. b.  
Cro. Car. 423.  
Hob. 297. An-  
tea. 44. b.

(b.) Hob. 300.  
9 Co. 26. a.  
Cro. Car. 543.  
Bridg. 142.  
Godb. 398.

(c.) Co. Lit.  
342. a. 1 Jones  
185.

(d.) Dyer 231.  
pl. 4. 1 Co. 47.  
a. 10 Co. 55. b.  
Ben. in Kelw.  
211. pl. 19. Ben.  
in Alb. pl. 19.  
N. Benl. 132.  
pl. 195.

discharged of Tithes; and although the Lands of such religious Persons may be (a) discharged of Tithes by Prescription, as it hath been late adjudged in the Case of one *Wigboldus* in this Court, or by Composition, &c. yet such general Allegation that he was discharged of Tithes, was not sufficient without shewing how he was discharged, either by Prescription, Composition, or other lawful Means. But if the Land had come to the King by the Statute of 31 H. 8. then (b) by Force of the said Branch of Discharge of the Payment of Tithes, such general Allegation, that such Prior &c. held the Land at the Time of the Dissolution of the said Priory discharged of the Payment of Tithes, without shewing how, had been sufficient, and so is the common Usage in Prohibitions.

The Fourth Question in the Case at Bar was, Whether any House which was Ecclesiastical, and not Religious, as Bishops, Deans and Chapters, Archdeacons, and the like shall be within the Act of 31 H. 8. for no House within the Act of 31 H. 8. is said Religious, but such which was regular and which consisted of such Persons as had professed themselves, and vowed three Things, that is to say, Obedience, voluntary Poverty, and perpetual Chastity; and those are called in our Law, dead Persons in Law. For after such Profession their Heirs shall have their Lands, and their Executors or Administrators their Goods, and that was called *Mors civilis*, which was the Reason that when a Lease for Life was made, always the *Habendum* was, To have and to hold to him *durante vita sua naturali*, for it was then taken, that the *Habendum* had been *durante vita sua* (without saying *naturali*) the civil Death, that is to say, the Entry into Religion had determined it. But it was resolved by the Court That no Ecclesiastical House, if it be not (c) Religious, within the Act of 31 H. 8. for divers Reasons.

1. The Words of the Act are always through the whole Act in the copulative, *Religious and Ecclesiastical*, so that if it be Ecclesiastical only, it is out of the Act.

2. The Makers of the Act gave the King as well those Religious and Ecclesiastical Houses as were dissolved, &c. as those which should be afterwards dissolved, but none were dissolved before the Act, but only Religious Houses, and no House Ecclesiastical only; for no Bishoprick, Deanary, Archdeaconry &c. or such like Ecclesiastical and Secular Corporation were dissolved before; therefore no Ecclesiastical House which was not Religious, (which after the Act shall be dissolved) was within the Intent and Meaning of the said Act.

Thirdly, It is enacted by the Statute of 31 H. 8. that all Religious and Ecclesiastical Houses, which after they shall be dissolved, &c. shall be in the actual Possession of the King, in the same State and Condition as they were

the Time of the making of the said Act, upon which Clause of the Statute it was adjudged, *Pasch. 5 Eliz. Rot. 125.* reported by Serjeant *Bendlores.* And *Mic. 6 & 7 Eliz. Dyer 231.* and *Plow. Comm. 207.* (a) That if an Abbot after the said Act grants the next Avoidance of an Advowson, or makes a Lease for Years, and afterwards surrenders, so that by the Act, the Possessions of the Abby ought to be in the King, in the same State and Condition as they were at the Time of the making of the Act; and at the Time of making of the Act, the Land and the Advowson were discharged of all Interests, for this Reason it was adjudged in both Cases, That the Lease and the grant were void by the said Act. But if a Dean and Chapter, and other such Ecclesiastical and Secular Corporations should be within the said Act, then if they should surrender their Possessions, they would avoid all their own Grants and Leases, which would be dangerous. And that was one principal Reason that the Colleges, Chanteries, &c. which came to the King by the Acts of 37 H. 8. or 1 E. 6. should not vest in the King by the Act of 31 H. 8. for the mischief before, for avoiding of their Leases, Grants, &c. And to conclude this Point, it was held in the Common Pleas in *Parret's Case*, concerning the Priory of *Frideswide*, that if the House be not religious and regular, that it is not within the Act of 31 H. 8.

And as to the Opinion of 10 Eliz. *Dyer 280.* (b) *Corbet's Case*, concerning the Priory of *Norwich*, it seems that that differs much from other Deans and Chapters, for the Dean and Chapter of *Norwich* was once religious, for they were Prior and Convent before; and yet that Case was denied by *Chief Justice*, and some other of the Judges, for Reasons and Causes aforesaid.

Fifthly, It was held by the Court, That although it is provided by the Statute of 1 E. 6. that the King shall have the Lands of the Colleges, &c. in as ample and large Manner as the said Priests, Wardens, &c. had or enjoyed same, that these general Words should not discharge the Land of any Tithes, for they are not issuing out of Land, but are Things distinct from the Land. For as the Book is in 1 E. 3. 13. a. the Prior shall have (c) Tithes of Land against his own Feoffment of the same Land; and it is no good Plea of Prohibition to alledge Unity of Possession in a College which came to the King by the Statute of 1 E. 6. as a Plea may by the Statute of 31 H. 8. in an Abbot, Prior, &c. as aforesaid; for the Statute of 1 E. 6. hath no such Clause

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(a) *Dyer 231.*  
*pl. 1. 1 Co. 47. 2.*  
*10 Co. 55. b.*  
*Ben. in Kelw.*  
*211. pl. 19.*  
*Benl. in Ash.*  
*pl. 19. N. Ben.*  
*132. pl. 195.*

(b) *Dyer 280.*  
*pl. 11, 12, 13.*

(c) *Cro. Jac.*  
*362. 452. 1 Co.*  
*111. a. 11 Co.*  
*13. b. 1 Rol.*  
*655. 2 Rol. 57.*  
*2 Bullst. 183, 184.*  
*Styles 279. Owen*  
*39. 40. Moor 47.*  
*50. 219. 532. 910.*  
*Dall. 50. Dav. c.*  
*2. Noy 35. 132. Br.*  
*N. C. 178. Dyer*  
*of 42. pl. 21. Cro.*  
*El. 161. 479.*  
*Degge 226. He:l.*  
*31.*

*Archbp. of CANTERBURY's Case. PART II.*  
of Discharge of Payment of Tithe, as the Statute of 31 H.  
8. hath. And therefore such perpetual Unity, as hath been  
said before, will not serve upon this Act of 1 E. 6. And  
afterwards a Consultation was granted: And another  
Consultation was granted the same Term in another Prohi-  
bition sued upon the same Matter, between *Green* and *Buff-*  
*ken*. And *Lawrence Tanfield* and others were of the Council  
with the Plaintiff, and the Attorney-General and others with  
the Defendant.

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Pasch

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Pasch. 39 Eliz. Reg.

*In the Exchequer.*

*Sir HUGH CHOLMLEY's Case.*

SIR Hugh Cholmley Debtor to the Queen, brought an Moor 343. 2 Rol. Rep. 60. Action of Trespass in the Exchequer against *Randal Hamner* and others, *Quare clausum fregit* in *Bettisfield* in the County of *Flint*, *quod minus*, &c. And upon Not guilty pleaded, the Jury gave a special Verdict to this Effect; *Thomas Holford* had Issue two Sons, *Christopher* his elder, and *George* his younger Son; *Christopher* had Issue *Mary*, Wife of the said *Sir Hugh Cholmley* now Plaintiff; and that the said *Thomas Holford* was seised in Fee of the Land in Question amongst others; and he and *Jane* his Wife, and *Christopher* their elder Son, did levy a Fine of the said Land 7 Eliz. to *John Warren* and *Thomas Stanley*, &c. to the Use of the said *Thomas Holford* for Life, and afterwards to the Use of the said *Christopher* and the Heirs Males of his Body, and afterwards to the Use of the said *George*, and to the Heirs Males of his Body, &c. and afterwards to the Use of the right Heirs of the said *Thomas*. And afterwards, that is to say, in Sept. 11 Eliz. the said *Thomas Holford* died; 23 Jan. 12 Eliz. the said *George* by Indenture between him and *John Warren* inrolled within six Months in the Chancery for 20 l. bargained and sold the Tenements aforesaid; and all his Estate, Right, Title and Interest in them to the said *John Warren*, to have and to hold the Tenements aforesaid and all his Estate, Right, Title, and Interest in them to the said *John Warren* for the Life of the said *Christopher*, and after his Death the Remainder to the Queen, her Heirs and Successors for ever, upon

## CHOLMLEY's Case. PART II.

(a) 1 Co. 82.  
2. Co. Lit. 372.  
b.

Condition that the Estate should be void upon Tender of 20 l. at the Chapel of the Rolls to the said Warren, or to the Queen, her Heirs or Successors; 14 Martii 12 Eliz. the said Christopher did enfeof Sir Hugh Cholmley, the Plaintiff's Father and others, to the Use of them and their Heirs, and 17 Aprilis 12 Eliz. at the great Sessions held within the said County of Flint, a common Recovery was had against the said Feoffees, who vouched to Warranty the said Christopher, who vouched over the common (a) Vouchee, and Execution was had accordingly, which was to the Use of Christopher and his Heirs. And afterwards, that is to say, 21 Novemb. 14 Eliz. George Holford tendred 20 l. to Warren at the Chapel of the Rolls, which he received. After which Tender, the Queen, by her Letter Patents bearing Date 14 Decemb. 14 Eliz. reciting the Grant made by the said George Holford to Warren, the Remainder to her upon the Condition aforesaid; and that the said Grant and Remainder to her was by Fraud and Covin, &c. *prout nobis satis liquet*, the Queen *ex certa scientia & mero motu* granted the Remainder which she had in the Tenements aforesaid to the said Christopher in Fee. And afterwards 15 Decemb. 14 Eliz. George Holford, by Indenture delivered at Westminster and inrolled within six Months in the Chancery bargained and sold to John Bruin the Tenements aforesaid to have and to hold for the Term of Christopher's Life the Remainder to the Queen in Fee upon Condition to cease upon Tender of 30 s. at St. Dunstan's Church, &c. to which Grant 18 Decemb. 14 Eliz. Bruin agreed; and afterwards (b) 4 Feb. 14 Eliz. another Recovery with (b) double Voucher in which the said Christopher was vouched again was suffered; which Recovery was to the Use of the said Christopher and his Heirs, Anno 19 Eliz. Christopher died without Issue Male, 27 Jan. 23. Eliz. George paid the 30 s. to Bruin according to the said Condition which was found by Inquisition, found by Virtue of a Commission under the Great Seal of England, upon which the said George shewed his Title to the Court; and, upon shewing his Right, it was awarded *quod Manus Domine Regina amoveantur*. And thereupon the Defendants, by the Commandment of the said George, entred upon the Plaintiff, who claimed in the Right of his Wife, whereupon the Plaintiff brought his Action of Trespass; and whether the Entry of the said George was lawful or not, was the Question.

And after many Arguments at the Bar, the Case was argued at the Bench by Ewens, Clark, and Periam Chief Barons. And it was unanimously agreed by them, that the Entry of George Holford was not lawful, wherefore Judgment



was given for the Plaintiff. And in this Case divers Points were unanimously resolved by the Court.

1. That the Remainder limited to the Queen after the Death of *Christopher*, was void for three Reasons:

1. Because *Warren*, who was Party to the first Indenture, took nothing; and by Consequence the Queen, who is not Party to the Indenture, but named by Way of Remainder (a) after the *Habendum*, the particular Estate being void, shall take nothing; for the Estate which is limited to *Warren* is for the Life of *Christopher*. And as to this Point the Case is such, *Christopher* being Tenant in Tail, the Remainder to *George* in Tail; *George*, by Deed indentured and inrolled, doth bargain and sell his Remainder to *Warren* for the Life of *Christopher*; this Grant is void, because it can never take Effect in Possession, nor can the grantee ever have any Benefit thereof: And therefore a Difference (b) was taken between such Grant of a Reversion and the said Grant of a Remainder; for the Grant of a Reversion during the Life of a Tenant in Tail is good, because he shall have the (d) Services which the Tenant in Tail ought to do during the Life of the Tenant in Tail; but such Grant of a Remainder can never to any Purpose take Effect, and therefore it is void. Moreover, a manifest Difference appears between this Case at Bar and a Case to *Christopher* for his Life, the Remainder to another for the Life of *Christopher*, for by Possibility the Remainder may take Effect; *scil.* If the Tenant for Life takes a Feoffment in Fee, or commits any Forfeiture, he the Remainder, may enter for the Forfeiture; and that is proved by the Book in 41 E. 3. Fitz. Wast 83. and (f) (re-*verere dicitur quasi terra remanens*) that cannot be when a Remainder cannot by any Possibility fall into Possession. A Remainder ought to vest in Estate, during the (g) particular Estate, and ought to take Effect in Possession when the particular Estate ends, for *vana est illa potentia nunquam venit in actum*. It was objected, that *Christopher* might enter into Religion, and then might *Warren* enter during his natural Life, for as much as *Christopher* had no Male. But as to that it was answered and resolved, that a Possibility (h) of Profession shall not make the Remainder good for two Reasons:

Because it is such a remote Possibility as shall not be intended by a common Intendment to happen; but (i) a Possibility which shall make a Remainder good, ought to be a common Possibility, and *potentia propinqua*, as Death, or without Issue, or Coverture, or the like. And therefore as the Logician saith, *Potentia est duplex, remota & proxima*, H<sup>6</sup>. 24. b. the Remainder to a (k) Corporation which at the Time of the Limitation of the Remainder is void,

(a) Co. Lit. 22.  
2. 26. b. 378. b.  
Cr. Jac. 434.  
Popham 125. 126.

(b) Yelv. 149.

(c) 11 Co. 70. b.

(d) Yelv. 149.

(e) Plowd. 422.  
2. Moor 344.  
Winch. 55.  
1 Sand. 151.

(f) Yelv. 149.  
Co. Lit. 143. a.

(g) 1 Co. 68. b.  
229. b. 130. a.  
134. b. 135. b.  
2 Co. 21. a.  
Raym. 54. 13.  
2 Anderl. 37.  
Moor 104.

(h) 11 Co. 70. b.

(i) Co. Lit. 20. b.  
25. b. 40 Co. 50.  
b. 2 Rol. Rep.  
129.

(k) Winch. 45.  
Moor 104. 140.  
33. 4 Leon 223.  
Co. Lit. 264. a.  
Hall. 31. 1 Roll.  
Rep. 254.



# CHOLMLEY's Case. PART II.

(a) Br. Done 22.  
Br. Grant 151.  
Raym. 144. Co.  
Lit. 343. a.  
Winch. 55.  
2 Anderl. 37.  
Moor 104. Perk.  
Sect. 52. Poph.  
82. 9 H. 6. 24. a.  
Hob. 33. 3 Co.  
20. a. 10 Co. 50.  
b. 51. 2.  
(b) Hob. 33.  
1 Rol. Rep. 254.  
Br. Done 22. Br.  
Grant 151.  
(c) 10 E. 3. 45.  
a. b. 46. 2.  
(d) 1 Rol. Rep.  
254. Moor 104.

(e) Moor. 104.

(f) 3 Co. 20. a.  
Raym. 144.  
2 Anderl. 37.  
Winch. 55.  
Moor 104. Co.  
Lit. 343. a. Poph.  
82. Perk. Sect. 52.  
Hob. 33. 9 H. 6.  
24. a. 10 Co. 50.  
b. 51. 2.  
(g) 1 Rol. Rep.  
254. Moor 104.

although such be erected during the particular Estate, for it was *potentia remota* : And this Difference plainly appears in a common Case in our Books. If a Lease be made for Life, the (a) Remainder to the right Heirs of J. S. This is good ; for, by common Possibility, J. S. may die during the Life of the Tenant for Life : But if at the Time of the Limitation of the Remainder there is no such (b) J. S. but during the Life of the Tenant for Life J. S. is born and dies, his Heir shall never take as it is agreed in 2 H. 7. 13. b. And in (c) 10 E. 3. 46. the Case was, That upon a Fine levied to R. he granted and rendred the Tenements to one I. and Florence his Wife for their Lives, the Remainder to (d) G. Son of I. in Tail, the Remainder to the Right Heirs of I. and in Truth at the Time of the Fine levied, I. had not any Son named G. but afterwards he had a Son named G. and died : And in a *Præcipe* against Florence, it was adjudged that G. should not take the Remainder in Tail, because he was not born at the Time of the Fine levied, but long after, wherefore another, who was right Heir to I. by Judgment of the Court, was received ; for when I. had not any Son named G. at the Time of the Fine levied, the Law will not suppose that he will afterwards have a Son named G. for that is *potentia remota*. Note Reader, A (e) Difference between a Remainder limited by a particular Name, and by a general Name ; for a Remainder limited by a general Name may be good, although the Person be not *in esse* at the Time of the Remainder limited : As if a Lease for Life be made, the (f) Remainder to the right Heirs of J. S. who is alive, this Remainder may be good and yet he hath no Heir at the Time of the Remainder limited. The same Law of a Remainder *primogenito filio*. But a Remainder limited in (g) particular by Name of Baptism and Sirname is not good, if the Person be not *in esse*. It is held in 7 E. 3. that if the Advowson of the Church of D. be granted to the Parson of D. and his Successors, it is void as to the Successor, because the Successor who ought to take it, can never have any Benefit by Way of Presentation.

The second Reason why the Remainder to the Queen is void, was because the Law will never adjudge a Grant good by Reason of a Possibility or Expectation of a Thing which is against Law, for that is *potentia remotissima & vana*, which by Intendment of Law *nunquam venit in actum*.

Thirdly, The Remainder to the Queen is void, because George having a Remainder in Tail, hath granted all his Estate to Warren, *Habendum* all his Estate during the Life of Christopher, the Remainder to the Queen, in which Case, when he hath granted all his Estate to Warren, he (b) cannot limit a

(b) Moor 344.

Remainder

Remainder thereof to the Queen; for a Remainder is but a Remnant of the Estate of the Grantor, and the Queen cannot have any Remnant of the Estate of George, when he having a Remainder in Tail has granted all his Estate to Warren. And *Littleton*, fol. 145, saith, That in such Case the Estate Tail is in (a) Abeyance. And 19 H. 6. 60. a. it is said, That if (b) Tenant in Tail be attainted of Felony, and the King after Office found seifeth, the Estate Tail is in Suspence. And *vide* 13 H. 7. 10. a. if (c) there be Tenant for Life, the Remainder in Tail, if he in Remainder in Tail release to Tenant for Life all his Right, it puts the Estate Tail so in Abeyance, that no Right remains in him who releases to have an Action of Waste; for in the same Case, by his Release, he hath put all his Estate out of him. It was agreed, *Hill. 35 Eliz.* in (d) *Blitheman's Case*, That if Tenant in Tail in Consideration of paternal Love, covenants by Deed to stand seised to the Use of himself, for his own Life, and after his Death to the Use of his eldest Son in Tail; and after this Covenant the Covenantor marries and dies, the Wife shall be endowed; for when Tenant in Tail hath limited the Use to himself for the Term of his own Life, he cannot limit any Remainder over, for an Estate for his own (e) Life is as long as he can limit by the Law, and therefore the Limitation of the Remainder is void. Wherefore it was concluded, that upon Consideration of the first Point *Warren* had nothing. And upon Consideration of this latter Point, if he should take *omnino*, he would take (f) *nimum*, and by Consequence the Remainder to the Queen is void *quacunqve via data*. And it was agreed that the Limitation to *Warren* by the *Habendum* for the Life of *Christopher*, was void and repugnant.

2. Admitting the Remainder to the Queen was good, yet it was resolved, that the common Recovery did bar the Estate of *Warren*, and by Consequence the Condition also during his Life; and therefore as to this Point the Case is but thus: A Man makes a Gift in Tail, the Remainder in Fee; he, in Remainder, grants his Remainder to another for Life; the Remainder to the Queen in Fee upon Condition *ut supra*, Tenant in Tail suffers a common Recovery, if this Recovery shall bar the Estate of Tenant for Life in Remainder, and the Condition also is the Queen's. And it was resolved, that the Recovery doth bar not only the Estate Tail, but also the Estate for Life of *Warren*, although the (g) Remainder of the Fee was in the Queen, for it is out of the Statute of (h) 34 H. 8. because the Estate Tail was not of the Queen's Gift, nor of any of her Ancestors, Kings of *England*, as it hath

(a) Lit. Sect. 649.

Lit. 146. a. 3 Co.

84. b.

(b) Godb. 442.

(c) Godb. 442.

(d) 1 Anderf.

291. Moor 345.

683. Lit. Rep.

122. Yelv. 51.

Cr. El. 279. 280.

Nov 46. 2 Rol.

Rep. 70. Godb.

442. Dyer 55.

pl. 3. in Marg.

(e) 1 Co. 44. a.

Co. Lit. 331. a.

332. a. Godb.

442. 443. Moor

414. 413. Lit.

Sect. 613.

(f) Moor 344.

(g) Antea 15. El.

Moor 115. 195.

345. 1 Anderf.

462. 473. 142. 143.

Cr. Car. 430.

Plowd. 555. a.

Yelv. 149. Noy

132. Co. Lit. 372.

b. 3 Leon 57.

4 Leon 40. Benl.

in Kelw. 213. a.

b. O. Benl. 32.

Benl. in Att. 26.

N. Benl. 223.

pl. 214.

(h) 34 &amp; 35 H. 8.

c. 20. 10 Co. 37. a.



hath been adjudged *Mich. 15 & 16 Eliz. in Partitions fe-  
cienda, inter Jackson & (a) Drury; & 27 Eliz. in Communi-  
Banco, inter (b) Wiseman & Jennings.* And if the Estate of  
Warren be bound and barred, the Condition annexed to  
his Estate is barred also during his Life. And therefore if  
one gives Lands in Tail, and afterwards grants the Rever-  
sion upon Condition; if the Tenant in Tail suffers a Com-  
mon Recovery, it bars the Reversion and Condition also.  
And therefore it was adjudged *Mich. 34 & 35 Eliz. between  
(c) Gately and Hunt, being an Exchequer Chamber Case,*  
by all the Judges of England, That if he in the Reversion  
with a Remainder expectant upon an Estate Tail grants a  
Rent Charge, or Common, or makes a Lease for Years, or  
acknowledges a Statute, and afterwards Tenant in Tail  
suffers a common Recovery and dies without Issue, the  
Possession of the Recoveror shall not be subject to the  
Charges, Leases, or Statutes of him in the Remainder.  
1. Because the Recoveror, so long as the Recovery re-  
mains in Force, is in under the Estate of Tenant in Tail,  
which Estate was not subject to any of the said Incumbran-  
ces of him in the Remainder: For suppose, that before the  
Recovery Tenant in Tail had made a Lease for Years, or  
acknowledged a Statute, and afterwards had suffered the Re-  
covery, and died without Issue, without Question the Pos-  
session of the Recoveror shall be subject to the Lease and Sta-  
tute of the Tenant in Tail, and shall not be subject to the  
Leases and Statutes of him in Remainder also, for then  
there would be Confusion. Also the Charges of him in  
Remainder or Reversion cannot take Effect in Possession  
till the Remainder or Reversion comes in Possession, and  
that cannot happen after the Recovery. The same Law of a  
Condition annex'd to a Reversion or Remainder for the  
Reasons aforesaid; then this Payment to Warren cannot  
devest the Remainder out of the Queen for three Reasons:

1. Because the Condition during the Life of Warren was discharged.
2. Because he who takes Benefit of a Condition ought to have the whole Estate given revested in him as in his first Estate, and that cannot be here; for the Estate for Life of Warren was barred by the Recovery: Also the Tender to Warren was to the Intent to revest his Estate, and that cannot be when his Estate was barred, and cannot be re-vested, for which Cause this Payment cannot devest the Remainder out of the Queen.

A third Point was argued by the Defendants Counsel, That there needed not in this Case any (e) Office or *Monfranc de droit* to devest the Remainder out of the Queen by Force of the Condition, for the Condition is performed by one Subject to another Subject by Matter *in pais*, and in as much as the Estate for Life cannot be re-vested by Force of the Con-

(a) Moor 115.  
pl. 258. 3 Leon  
37. Ca. 84.  
1 Anderf. 48.  
ca. 118. Benl in  
Kelw. 213. pl. 26.  
Benl. in Ash. 26.  
Q. Benl. 32. pl.  
132. N. Benl. 223  
pl. 254.  
(b) 3 Co. 15. 2.  
b. Moor 195-345.  
1 Anderf. 140,  
141.  
(c) Moor 154.  
345. 1 Co. 61. b.  
62. 2. b. Poph. 5.  
Jenk. Cent. 250.  
4 Leon 150.  
1 Anderf. 282.  
Goldsb. 5. 10 Co.  
42. b. 2 Rol. Rep.  
221. 1 Co. 127.  
b. 128. 2. 3 Keb.  
288, 289. Winch.  
41. Noy 10.  
Palm. 139.

(d) Co. Lit. 202.  
2. 1 Co. 86. b.  
4 Co. 122. b.  
1 Rol. 474. Cr.  
11. 641.

(e) 2 Rol. 215.  
Cr. Eliz. 641.  
Moor 546.



tion, unless the whole Estate to which the Condition trench-  
 ed be defeated, therefore for Necessity, and by Operation  
 of Law, the Estate for Life being defeated, the Remainder  
 to the Queen, which depends upon it, shall be defeated also;  
 as in 49 E. 3. in *Isabel (a) Goodcheap's Case*. One devised  
 Houses in London, devisable by Custom, and held of the  
 King in Tail, and if the Donee died without Issue, that  
 the Land should be sold by his Executors, and died; the  
 Devisee died without Issue, now the Land is escheated to the  
 King, yet the Bargain and Sale of the Executors shall de-  
 vest the King's Estate for Necessity, and that without Petition,  
 or *Monstrance de droit*; and also their Vendee is in by the  
 Devisor, paramount the Escheat: So the Bargainor in this  
 Case shall be in of his ancient Estate paramount the Re-  
 mainder to the Queen. 25 E. 3. 48. a. (b) If a Disseisor, or  
 one who hath no Title makes a Lease for Life, the Remain-  
 der to the Queen; if the Disseisee, or he who hath good  
 Right, recovers against Tenant for Life, and entreth, the  
 Queen's Remainder shall be thereby defeated; otherwise if  
 the Recovery be by (c) feigned or no Title, there the  
 Queen's Remainder is not touched; and *Plow. Comm.* 553,  
 a. b. agrees therewith. So if Tenant in Tail grants the Land  
 to the King in Fee with Warranty, and the King grants  
 it for Life, Tenant in Tail dies, and the Issue in Tail re-  
 covers in a *Formedon* against Tenant for Life, the King's  
 Estate shall be defeated, as it appears by (d) 7 R. 2. *Aide del*  
 by 61. 22 E. 3. 7. acc. And so it was said, if the Disseisee  
 in such Case enters, it shall defeat the King's Remainder.  
*Plow. Comm.* (c) 489. a. And note there the principal Case  
 of the Lord *Level*: An Estate vested in the King shall be de-  
 feated by Force of a Condition, by an Act in Law, without  
 Office or *Monstrans de droit*: And mark there the Cases of  
 Remitter put in the End of the Case. Against which it was  
 argued by the Plaintiff's Counsel, That admitting the Re-  
 mainder to the Queen to be good, that this Tender in *pais*  
 to a Subject shall not de-vest the Remainder out of the Queen.  
 or as *Bracton* saith, (f) *Nihil tam conveniens est naturali*  
*quiritati unumquodque dissolvi eo ligamine quo ligatum est*:  
 and as no Estate can be vested in the Queen without Mat-  
 ter of Record, so no Estate can be de-vested out of her (g)  
 without Matter of Record. See *Plow. Comm.* 553. a. b. in *Wal-*  
*ingham's Case*, and *Plow. Comm.* 380. *Nevil's Case*, (h) 12  
 7. and many other Books. And it was said, that when  
 Estate shall be de-vested out of a common Person, and  
 vested in another, without Action, Entry, or Claim, it shall  
 be de-vested out of the King without Petition or *Monstrans*  
*de droit*, as it is agreed *Plow. Com.* 489. a. in the Lord *Level's*  
 Case cited by the other Side; but when in the Case of a  
 common Person the Estate shall not be de-vested out of him  
 without Action, Entry, or Claim; there it shall not be de-  
 feated out of the King without Petition or *Monstrans de droit*,

(a) Lit. Rep. 123.  
 Godb. 443. Cr.  
 El. 640. 8 Co. 76.  
 b. 49 E. 3. 16. a.  
 b. Br. Escheat 320.  
 Br. Devise 10.  
 Fitz. Devise 2.  
 Plowd. 259. a.  
 4 Co. 58. a.  
 Raym. 83. 29  
 Ass. 31. Hard.  
 13. 14. Swinb.  
 335. 2 Rol. Rep.  
 351. Postea 53. b.

(b) Co. Lit. 242.  
 a. 354. b. Cr. El.  
 640. 1 Co. 16. a.

(c) Co. Lit. 354.  
 b. 1 Co. 16. a.

(d) Co. Lit. 354.  
 b. 4 Co. 59. b.

(e) Hob. 348.

(f) 4 Co. 57. b.  
 5 Co. 26. a. 6  
 Co. 43. b. 2 Inst.  
 359. 373. Davis  
 33. b.  
 (g) Cro. Eliz.  
 641. Moor 346.  
 Kelw. 7. b.  
 (h) 12 H. 7. 21.

# CHOLMLEY's Case. PART II.

&c. And the principal Case in *Plowden's Commentaries* in the Case of the *L. Lovel* was well agreed; for there, by Force of the Condition, if it had been in the Case of a common Person, the Estate gained by Escheat should be divested by Act in Law without Entry or Claim: And so and for the same Reason the Cases of Rmitter, and the Case in (a) 49 E. 3. were well agreed. And also for as much as the Executors in 49 E. 3. had but a Power, they had no other Mean but only to sell, for they could not have a Petition, *Monstrans de droit*, or other Remedy. But in this Case, *G. Holford*, the Grantor, had clear and apparent Remedy, either by Petition or *Monstrans de droit*. And it was said, that the Queen's Remainder did so privilege the Estate of the Tenant for Life that the Grantor could not enter upon the Tenant for Life. And it was said, if Land upon Condition comes to the Queen, the Condition is broken; the Queen makes a Lease for Life, he who hath the Condition cannot enter, but ought to have a Petition or *Monstrans de droit*, &c. and that appears in the Book in (b) 9 H. 4. 4. a. b. A Man bound in a Statute conveys Land to the King, who leases for Life, the Conusee shall not extend upon the Possession of the Tenant for Life. And it was said, if the Cases put before, when he who hath Right doth recover against Tenant for Life, the Reversion or Remainder being to the King by (c) defeasible Title shall divest the King's Estate, should be granted, yet they are not to be compared to our Case; for in our Case, the Party himself, who hath conveyed the Land lawfully to the King, would now defeat the Estate which himself hath made by Entry, which, as was said, he cannot do; but when a Disseisor conveys Land to the King, and the King grants it over for Life, there, if the Disseisee, who is a meer Stranger, by his Entry or Action, shall divest the King's defeasible Title, yet it is not to be resembled to our Case. But this Point was not (d) resolved, for the Barons gave Judgment upon the other Points.

But it was agreed in this Case, although the Remainder passed by Bargain and Sale, so as in Judgment of Law an Use passed first, and although it was of a Thing which lieth in Grant and not in Livery; and that the Words of the Condition are, that upon Payment of the Money, that the Estate shall cease and shall be void, yet the Estate shall not be re-vested in the Grantor without Claim; for the Estate of Inheritance cannot be determined by Condition (e) without Entry or Claim. In *Newis* and *Scholastica's* Case in *Plow. Comm.* 413, Difference is taken between a Condition and a Limitation; for a Limitation shall determine an Estate without Entry or Claim, otherwise of a Condition. See *Browning* and *Boston's* Case, 133 & 136. Another Difference is taken between a Rent *in esse* granted upon Condition, and a Rent newly created granted upon

(a) 49 E. 3. 16. 2.  
 b. Antea 53. 2.

(b) Br. Petition  
 Br. Statute  
 Merchant 11.  
 Br. Entry con-  
 geable 21. Fitz.  
 Petition 15.

(c) Co. Lit. 354.  
 b. Cr. El. 640.

(d) 2 Rol. Rep.  
 60.

(e) Moor 292,  
 345, 346. Co.  
 Lit. 214. b. 218.  
 a. 1 Co. 94. b.



Condition. And although an (f) Use at Common Law (f) 8 Co. 34. a. might have ceased without Claim, yet now the Use is transferred to the Possession; for the Pleading is, (g) *vigore Statuti*, &c. *de usibus in possessionem transferendis*, so that now since the Statute, to such Qualities to which Estates by the Common Law are subject, to such (a) Qualities Uses are subject, for the Use is transferred and incorporated to the Possession. And Baron Ewens said, That upon this Reason it was adjudged in the King's Bench, that where one by Deed indented and enrolled, bargained and sold Land to another, and his Heirs rendring Rent, that the (b) Reservation was good; for now the Use and the Possession pass *tanquam uno statu*, and therefore it is all one with a Grant of the Land itself; for if the Use should pass first, then Rent cannot be reserved out of the Use, and then the Reservation of the Rent would be void. Also it was resolved, that this Claim of the Remainder, by Force of the Condition, ought to have been made upon the Land, and that Claim made out of the Land was not sufficient. And therefore the said Bargain and Sale to Bruyn by Deed indented, being made at *Westminster* out of the Land, could not in this Case enure to two Effects: *scil.* First, to make a Claim, and then to pass the Remainder, as it was objected by the Defendant's Counsel. See *Litt.* 40. If a Villain purchase a Reversion, the (c) Claim by the Lord ought to be made upon the Land. And the Book 15 *Aff.* 12. is good Law; that a Distress upon the Land after a Condition broken, amounts to a Claim of the Seignior, to which it was annexed. So it was concluded, first, because the Remainder to the Queen, was void, by Consequence the said common Recovery hath barred the Remainder to George, and by Consequence the Plaintiff claiming under the Recovery, ought to have Judgment to recover. Secondly, Admitting the Remainder good to the Queen, and that the Condition was not discharged during Warren's Life; and that the Remainder to the Queen shall be defeated without Petition or *Monstrans de droit*, yet the same is not determined 'till Claim made upon the Land, and then the Grant of the Queen is good, and the second Grant of G. Holford to the Queen is void, and by Consequence the second Recovery is a good Bar. But against the Grant, by the Letters Patents, divers Objections were made by the Defendant's Counsel.

1. For as much as the Queen recites that the said Bargain and Sale to Warren, the Remainder to the Queen was upon Fraud and Covin, and it was not found that it was upon Fraud and Covin, It was said, that the Patent was void, because the Queen was deceived in her Grant, and then admitting the Remainder to the Queen to be good, the Land doth yet remain in the Queen, and then the Defendant not guilty to the Plaintiff.

(f) 8 Co. 34. a.  
3 Co. 34. 2.  
3 Co. 27. 2.  
(g) 27 H. 8. c. 10.

(a) Co. Lit. 23. a.  
1 Co. 137. b. 138.  
2. 8 Co. 34. 2.

(b) Co. Lit. 244.  
2. Cr. El. 595.  
2 Rol. 448. 211. ft.  
673.

(c) Co. Lit. 119.  
2. Co. Lit.  
§. 179. Perkins.  
§. 29. Moor 346.



# CHOLMLEY's Case. PART II.

(d) Lane 12.

Secondly, The Queen recites her Estate to be upon (d) Condition, and in Truth at the Time of the Making of the Letters Patents, the Condition was discharged during the Life of *Warren*. And for this Cause also the Patent was void, because the Queen also in that was deceived. For, peradventure, if the Queen had known that her Estate was discharged of the Condition during the Life of *Warren*, and had not been subject to the Pleasure of *G. Holford* to be revoked when he would, the Queen would not have granted it. As to the first Objection, it was resolved, that the Grant is good notwithstanding that, for three Reasons :

(a) Lane 109.  
Cr. Eliz. 641.

1. Whether it was upon Fraud or no, was not anything Material ; for if the Recital be of a Thing which sounds to the Queen's Profit, and is false, that may make the Patent void. But (a) Recital of a Matter *in pais*, and not of Record, which is past, not material nor valuable, shall not impeach the Grant.

Secondly, It appears to be Covenous, and need not be averred ; for it appears to be made upon a Condition to be defeated at his Will, and the Intent and Purpose of it was to prevent *Christopher* of his Birthright, *scil.* of his Power which he had to cut off the Remainder to *George* by a common Recovery.

(b) 6 Co. 55. b.  
Lane 12, 13.  
Moor 164.

Thirdly, The Queen recites it to be upon Fraud *pro nobis satis liquet*, and the Letters Patents are *ex certa scientia & mero motu*, so that the Queen takes special Knowledge thereof, and it cometh not upon the Suggestion of the Party. And as to the second Objection against the Grant, it was resolved, That notwithstanding that, the Patent is good : For the Queen's Recital is true ; for at first the said Bargain and Sale was Conditional as it was recited, and it is not affirmed by the Recital that it doth so remain. Also the Condition might be determined by Matter *in pais*, *scil.* by Release to *Warren*, or by many other Ways ; so that it would be hard for the Patentee to take Knowledge thereof ; and a Thing which may be done or performed by Matter *in pais* need not be recited. *Warberton*, Serjeant at Law, the Attorney-General, and *Harris* of *Lincoln's Inn*, were of Counsel with the Plaintiff ; And *Williams*, Serjeant at Law, *Dawport* and others, with the Defendant.

Mich.

## Mich. 39 &amp; 40 Eliz.

## BUCKLER's Case.

THE Case between (a) *Buckler* and *Harvis* in the Common Pleas, which began *Trinit. 37 Eliz.* was such: *In Ejedione firma*, it was found by special Verdict, That *Buckler* was Tenant for Life, the Remainder over in Fee; Tenant for Life made a Lease for four Years, in *March 20 Eliz.* the Lessee entred, Tenant for Life granted *tenementa prædicta* to C. *Habendum tenementa prædicta* from the Feast of the Nativity of St. John the Baptist next following for Life, after the said Feast the Lessee for Years attorned; the Years expired, C. entred and made a Lease at Will to D. to whom the Tenant for Life levied a Fine *com. 600, &c.* he in Remainder in Fee entred, and made a Lease to the Plaintiff, the Tenant at Will entred upon him, and he brought the *Ejedione firma*. And Judgment was given for the Plaintiff. And in this Case five Points were resolved.

1. That the Grant to C. was void; for the Law will make (b) 3 Co. 59. b. Construction upon the (b) whole Grant; and an Estate of Godb. 324. Freehold cannot commence in (c) *futuro*. And the *Haben-* (c) 2 Anderf. 29. Moor 393, 394. 423, 424, 881. Cr. El. 29, 254, 255, 450, 585. Cr. Car. 547, 548. Cr. Jac. 376, 563. 1 Jones 437. 2. The Office of the (d) Premises of a Deed of Peoffment is to Godb. 265, 451. 1 Rol. Rep. 109, 110, 138, 253, 254, 256, 261. 3. The Office of the (e) *Habendum* is to limit the Estate: 4 Leon 8. Co. Lit. 48. b. 2 Rol. 10, 66. 11 Co. 77. 2. 78. a. Br. Grant. 60. Br. Patent 29. Palm. Hetley 23.

4. That the general Implication of the Estate which shall pass by the Construction of Law by the Premises, is always controlled (d) Co. Lit. 6. a. 9 Co. 47. b. 3 Rol. 65. 10 Co. 107. b. (e) Co. Lit. 6. d.

(a) 2 Co. 24. 2.  
Plowd. 153. 2.  
Dall. 30. pl. 10.  
2 Leon 10. 11.  
8 Co. 154. b.  
(b) Cr. El. 25. 89.  
Co. Lit. 183. a. b.  
Hob. 172. Palm.  
34. 2 Rol. 65.  
Moor 26.

(c) Cr. El. 254.  
255. Cr. Jac. 376  
Co. Lit. 48. b.  
2 Bulst. 274. Hob.  
171. 1 Rol. Rep.  
254. Moor 881.  
2 Rol. 10. 66.  
(d) Cr. Jac. 563.

(e) Cr. El. 585.  
Co. Lit. 35. 2.  
4 Co. 2. b. 90. 2.  
10 Co. 62. 2.  
Cawley 214.  
8 Co. 135. b.  
Davis 32. 2.  
2 Bulst. 304. 305.  
3 Bulst. 192.  
(f) Cr. El. 451.  
Cr. Car. 306. 388.  
Lit. Rep. 298.  
373. Cr. Jac.  
660. 1 Jones 316.  
(g) Co. Lit. 49.  
2.

(h) Co. Lit. 252.  
2.

(i) Co. Lit. 252.

(k) 2 Anderf. 29.  
30. Cr. El. 450.  
451. 586. Moor  
424.

(l) Cr. El. 586.  
(m) Co. Lit. 252.  
2.

(n) Co. Lit. 252. 2.  
10 H. 7. 20. b.

and (a) qualified by the *Habendum*. As a Lease to (b) two, *Habendum* to one for Life, the Remainder to the other for Life, will alter the general Implication of Joint-tenancy of the Freehold, which without any *Habendum* would be made. And although the *Habendum* be void, and so in Effect as no *Habendum*, yet no Estate shall pass by Implication of Law against the expresse Limitation of the Party, although his Limitation be void; and so was it adjudged in the King's Bench between (c) *Hezge* and *Cross* for Houses in London, *M. 33 & 34 Eliz. in Ejectione firmæ*.

Secondly, That the Grant being void at the Beginning, the (d) Attornment after Midsummer would not make the Reversion pass; For *quod (e) ab initio non valet, tractu temporis non convalescet*.

Thirdly, When C. entreth by Colour of this void Grant, he is a (f) Disseisor. And a Difference was taken betwixt a Grant made by Agreement of the Parties which stands not with the Rules of Law, and which never can by any subsequent Act, as by Livery, or Attornment, be made good, and a Grant good at the Beginning, but to have its Perfection by a subsequent Ceremony. As in Case of a Charter of Feoffment, if the Feoffee entreth before Livery, he is no Disseisor, for the Charter is good; and the Agreement of the Parties accords with the Law, and it may be made good by Livery of Seisin (g) subsequent. Note, There is Difference between a good Beginning or a Foundation capable of a Building, and a bad one, which wanteth Foundation, upon which no Building can stand.

Fourthly, It was agreed, that if the Fine had been levied (h) to the Disseisor himself *come ceo, &c.* he who had the Right of Remainder might enter for the Forfeiture. For it was agreed, that the (i) Right of a particular Estate might be forfeited, and Entry given thereby to him who had but a Right to the Remainder: As if Lessee for Years be ousted, or Lessee for Life be Disseised, and the Lessee for Years brings an Assise, or other real Action, and the Lessee for Life brings a Writ of Right, it is a Forfeiture of the Right; and he who hath but a Right of Reversion may enter for the Forfeiture.

Fifthly, It was agreed, that in the Case at Bar, the Fine levied to the Tenant at Will was a (k) Forfeiture, and he who had the Right of Remainder might enter upon the Tenant at Will, and by that purge the Disseisin; And the Tenant for Life, and the Tenant at Will also, shall be estopped to say (m) *quod partes finis nihil habuerunt*, and such Estoppels which are by Matter of Record, and trench the Dis-enherison of them in the Reversion or Remainder, they shall take Advantage although they be not Parties to it, as of an (n) Aid Prayer of a Stranger



or by (a) Acceptance of a Fine *sur Conusans de droit come* (a) 1 Rol. 852.  
*est, &c.* Although he in the Reversion or Remainder Co. Lit. 252. a.  
 be not Party to the Record, yet he is privy in Estate to Dyer 148. pl. 79.  
 take Advantage of any Forfeiture by any Matter of Record 9 Co. 106. b.  
 done to his Dis-enherison. 1 Mod. Rep. 117.  
 3 Keb. 687. 688.  
 1 H. 7. 12. a. b.

Sixthly, It was said, that if the (b) Disseisee levy a Fine (b) Cr. Car. 306.  
 to a Stranger, that in this Case the Disseisor shall retain 484. Co. Lit.  
 the Land for ever; for the Disseisee, against his own Fine, 49. a. 1 Jones 316.  
 cannot claim the Land, and the Conusee cannot enter; for 398. Goldsb. 162.  
 the Right which the Conusor had cannot be transferred to 1 Rol. 865. E. pl.  
 him; but, by the Fine, the Right is extinct; whereof the  
Disseisor shall take Advantage.

*Trin.*

*Trin. 31 Eliz. Rot. 750.*

**BECKWITH's Case.**

**RADFORD,**

Co. Ent. 603.  
pl. 18. 4 Leon.  
38. 1 Anderf. 164.  
2 Anderf. 78.  
Moor 196. Gold.  
22. 67. Godbolt  
280. Palm. 214.

**I**N a Replevin between *Colgate* and *Blithe*, of the Taking  
*&c.* in a Place called *Ryecroft* in *Fooldstray* in the Count-  
 y of *Lancaster*; the Defendant made Conusees as Bailly to  
*Robert Beckwith*, because *Elizabeth Beckwith*, his Mother, was  
 seised in Fee, and died seised, whereby it descended to him  
 as to her Son and Heir, who entred and was seised  
 and for Damage-feasant, the Defendant, as Bailly to the said  
*Robert*, did distrain, *&c.* In bar of which Avowry, the  
 Plaintiff said, That to say that the said *Elizabeth* died sei-  
 sed in Fee, the Defendant shall not be received, for long  
 Time before the Distress, *&c.* the said *Elizabeth* was seised  
 in Fee, and took to Husband *Christopher Kenne*, who levied a  
 Fine to the Use of the said *Christopher Kenne*, and the said  
*Elizabeth* his Wife for their Lives, and afterwards to the  
 Use of the Conusees for their Lives, to the Intent that  
 they should suffer the said *Robert Beckwith* to take the Pro-  
 fits of the Tenements in which, *&c.* for his Life, with di-  
 vers Remainders over, *&c.* Against which the Defendant  
 said, that the said Fine was levied to the Use of the said  
*Elizabeth* in Fee, without that, that it was levied to the Use  
 the said *Christopher* and *Elizabeth* for their Lives, at *supra*.  
 And the Jurors found a special Verdict to this Effect: *Ch-*  
*stopher Kenne* and *Elizabeth* his Wife were seised of the T-  
 nements aforesaid, in Fee in the Right of the said *Elizabeth*.  
 And that an Indenture was made by the said *Elizabeth* witho-  
 the Assent of her Husband, between her, by the Name  
*Elizabeth Beckwith*, one of the Daughters and Heirs of *Reg-*  
*Cholmley*, Knight, on the one Part, and *Will. Vavissour* and oth-  
 Conusees in the said Fine on the other Part, bearing Da-

the 14th Day of *March*, in the 14th Year of the Reign of our Sovereign Lady the Queen that now is, (which the said Elizabeth sealed and delivered as her Deed in *August* after, without the Assent of her Husband) by which Indenture the said Elizabeth alone limited and declared the Uses of a Fine which afterwards should be levied, to be in Form following: That is to say, To the Use of the said Elizabeth for

Life without (a) Impeachment of Waste, and afterwards to the Use of the Conusees for their Lives, and afterwards to such Uses as in the Replication is alledged: And it was further found, that the said Christopher Kenne, after the Marriage and before the Fine levied, made another Indenture without the Consent of Elizabeth his Wife, bearing

Date the 13th of *February*, in the 22d Year of the said Queen's Reign, by which it was mentioned, That the said Indenture was made between the said Christopher and Elizabeth his Wife on the one Part, and one Robert Wrote, Nicholas Brook, and others, of other Part; Which Indenture was sealed and delivered by the said Christopher only as his Deed. By which Indenture it was declared, That the Uses

of the said Fine should be to the Use of the said Christopher and Elizabeth for their Lives without Impeachment of Waste, and afterwards to the Use of the Conusees, as in the Replication was alledged. And further it was found,

That afterwards the said Fine mentioned in the said Bar was levied by the said Husband and Wife of the Tenements aforesaid to the said Conusees mentioned in the Indenture of the Wife, and that there were no other Uses of this Fine. And whether upon the whole Matter aforesaid, the said Fine was levied to the Use of the said Christopher and Elizabeth for their Lives was the Question. And it was adjudged,

That (b) both the said Limitations and Declarations of the Uses in both the Indentures were void, and that the said Fine was by Construction of Law to the Use of the said Elizabeth and her Heirs as if no Use had been declared, and in this Case these Points were resolved:

1. If Husband and Wife levy a Fine of the Land where they are seised in the Right of the Wife, and the Husband only declares the Use of the Fine, this Declaration of the Use shall bind the Wife (c) if her Dis-assent doth not appear, although her Assent to the Declaration of the Uses cannot appear. For when she joins with her Husband in the Fine, it shall be intended, if the contrary cannot appear, that she joined also with him in Agreement in the Declaration of the Uses of the Fine.

Secondly, It was resolved, That if Husband and Wife sell the Wife's Land to another for Money by Word, and afterwards levy a Fine to the Vendee and his Heirs, in this it is good, and shall bind the Wife without any Writing proving her Assent, *a multo fortiori* when the use is declared

I

by

(a) 2 Co. 23. b.  
4 Co. 63. a.  
9 Co. 9. a. 11 Co.  
82. b. 33. a.  
1 Rol. Rep. 182.  
Co. Lit. 220. a.  
Dyer 10. pl. 37.  
1 Bulstr. 136.

(b) 1 Anderf. 164.

(c) Goldsb. 68.  
69. 70. 1 Rol.  
798. Godb. 180.  
Moor 197.  
2 Anderf. 78.  
Owen 6.

(d) 4 Leon. 89.  
90. 1 Rol. 798.  
1 Anderf. 163.  
Goldsb. 14.  
Moor 22.



by the Husband's Deed, and no other declared by the Wife, it shall bind; *Vide 12 El. Dyer 290.* (a) Husband and Wife were seized of a Tenement in London to them and to the Heirs of the Husband, and the Husband covenanted by Indenture, in Consideration of 20 l. That he and his Wife would suffer a Recovery by Writ of Right according to the Custom of London, which binds as a Fine at Common Law, and that the Recovery should be to the Use of the Recoverors, until they had made a good and sufficient Lease by Indenture, for Forty Years, and after the making of the said Lease, then to the Use of the Husband and Wife, and the Heirs of the Husband, and the Recovery was had accordingly; And the Opinion of all the Judges was, That the Lease was good, and not defeasable by the Wife who survived her Husband, and so was the Opinion of all the Justices in the King's Bench, and yet in such Case the Husband was only Party to the Deed, which declared the Uses, and notwithstanding it bound the Wife for the Reason aforesaid.

Thirdly, it was resolved, That every one may declare and dispose the Use of the Land, according to the Estate which he hath in the Land, for the Declaration and Disposition of the Use doth follow the Ownership of the Land, as (b) the Shadow followeth the Body, and now by the Statute of 27 H. 8. the Shadow or the (c) Accessary draweth to it the Body and the Principal, that is to say, The Use draweth to it the Estate of the Land, and therefore in all Reason the Owner of the Land ought to limit the Use, for by it the Estate of the Land it self shall be transferred to the Use; and therefore in the principal Case, the Wife alone, although she is Owner of the Land, yet forasmuch as she is *sub potestate viri*, (d) she cannot in respect of her Coverture, without her Husband limit the Use; and on the other Side, the Husband, who hath not any Estate in his own Right, cannot against the Agreement of the Wife, limit the Use, for he is not Owner of the Land: So one is not *sui juris*, and hath the Estate, and the other is *sui juris*, and hath not the Estate, and therefore when they differ in the Limitation, it is void. And it is to be noted, That when Husband and Wife levy a Fine of the Wife's Land, the whole Estate passeth from the Wife and the Conusee is in by the Wife only; and if the Fine be reversed for the Nonage of the Wife, the whole Estate which passed by the Fine, shall be restored to the Wife presently, for the whole Estate passed from the Wife, as it was adjudged in the King's-Bench, in (e) *Worsley's Case*: And therefore it would be against all Reason, that the Husband against the Agreement of the Wife, should limit the Uses of the Wife's Land. And if the Husband may declare the Use of his Wife's Land, great Inconvenience would follow, and Wives might be disinherited and deceived by their Husbands, which would be inconvenient: As if they persuaded

(a) Goldsb. 14.  
69. 1 Rol. 388.  
2 Rol. 798.  
4 Leon. 90. Noy  
222. Jenkin's  
Cent. 238. Dyer  
290. pl. 61.

(b) Goldsb. 68.

(c) 10 Co. 42. b.

(d) 1 Anderf.  
264. Goldsb.  
23, 15. 67, 68,  
69. Moor 197.  
4 Leon. 89, 90.  
Winch. 104.

(e) 1 Rol. 748.  
Cr. Eliz. 129.  
Poltea 57. b.  
Owen 21.  
1 Leon. 114,  
225. Bridgyn.  
71.

their Wives, that the Uses shall be in one Form, and thereby draw them to consent to levy a Fine, and afterwards the Husband alone declares other Uses, varying altogether from the Uses to which the Wife agreed, and so deceive and disinheret their Wives; And truly, if the Law requires such Ceremony of secret (a) Examination of married Women (a) Hob. 225. before a Judge, touching their voluntary and free Assent as if she was Sole, it would be against Reason, that the Husband should against the Assent of the Wife, dispose of the Use of the Wife's Land, which is all the Fruit of the Land now. And it was said, If an (b) Infant levies a Fine, and declares the Use of it, this Declaration shall bind him as long as the Fine remains in Force; for in as much as he hath been admitted by the Judges as a Man of full Age to levy a Fine, the Law as long as the Fine remains in Force, will permit him to limit the Use thereof, so of a Man *non compos mentis*.

(b) 10 Co. 42.  
b. Goldsb. 13.  
Hob. 224.  
4 Leon. 89.  
Moor 22. Winch.  
104, 106.  
1 Jones 390.  
Bridgm. 75.

Fourthly, It was resolved, That although the Variance was in the first particular Use (the Wife limiting it to herself only for her Life, and the Husband limiting it to him and his Wife for their Lives) and all the other Uses in Remainder limited in both the Indentures, are according to both their Consents, yet all the Uses are void: But if there be two (c) Jointenants, or two having several Estates, join in a Fine, and one declares the Use in one Manner, and the other in another Manner, the same is good for each of their Parts, for the Declaration of the Use shall be directed and governed according to their Estates and Interests; but between Husband and Wife, the Estate is only in the Wife, and so the Difference. But if the Husband and Wife agree in the Limitation of the Use of part of the Land, and vary in the Limitation of the Residue of the Land, it is good for Part, and void for the Residue.

(c) Goldsb. 15.  
4 Leon. 90.  
Larch. 82. Noy  
77. Palm. 405.

So note Reader, a Difference between Variance, touching the Limitation of the Use of Part of the Estate of the Land, and touching the Limitation of the Use of Part of the Land it self. And it was said, If a Man at this Day seized of Land on the Part of the (d) Mother, makes a Gift in Fee, without Consideration, he shall be seized as he was before on the Part of the Mother. And if there be two Jointenants, one for Life, and the other in Fee, and they levy a Fine without Declaration of any Use, the Use shall be to them of the same Estate as they had before in the Land. So if A. (e) Tenant for Life, and B. in Reversion or Remainder, levy a Fine generally, the Use shall be to A. for Life, the Reversion or Remainder to B. in Fee, for each grants that which he may lawfully grant, and each shall have the Use which the Law vests in them, according to the Estate which they convey over.

(d) Dall. 61.  
pl. 14. Goldsb.  
69. 1 Co. 127.  
a. b. 100. b.  
2 Rol. 780. Dy-  
er 134. pl. 9.  
Co. Lit. 23. a.  
1 Co. 88. a.  
Hob. 31. 13 Co.  
56. 8 Co. 54. b.  
5 E. 4. 7.  
Fitz. Subpoena  
2. Br. Discern.  
11. 7 H. 6. 4.  
b. Br. Foff-  
ment al use 32.  
(e) Goldsb. 15.



(C) Bac. Leſ.

101. b. 112. a.

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If A. seized in Fee of an Acre of Land, and he and B. levy a Fine of it to another without Consideration, the Use implied shall be to A. only and his Heirs: for an (a) Use which is but a Trust and Confidence, and a Thing in Equity and Conscience shall be by Operation of Law to him who in Truth was (b) Owner of the Land, without having Regard to Estoppels or Conclusions, which are averse to Truth and Equity. So it was adjudged in the principal Case. Where Husband and Wife levy a Fine without (c) Declaration of any Use (which was sufficient in Law) the Law shall reveal the Use in the Wife only, because the Estate of the Land passes only from her, and the Husband joins with her but for Conformity.

Note Reader, Although the Husband may dispose of the Wife's Lands during the Overture, yet in this Case, for the Reasons and Causes aforesaid, his Declaration was meerly void, *quod nota.*



Mich. 40 & 41 Eliz.

In the King's Bench.

JULIUS WINNINGTON's Case.

James Pilkington brought an *Ejectione firme* against Julius Winnington, upon a Demise made by Thomas Winnington, of a House and Land in *Binchers* in the County of Chester, before the Judge there, and upon Not guilty pleaded, the Jurors gave a special Verdict to this Effect; and for the better Manifestation of the Case, this Pedigree is to be observed.

Co. Ent. 229.  
pl. 1. Jenks  
Cent. 253.

Robert Winnington had Issue

John, who had  
Issue,

Robert, who  
died without  
Issue,

Thomas, the  
Lessor to the  
Plr.

Julius, one of the  
Defendants.

Robert the Father was seized of the Tenements in which, &c. in Fee, and thereof did enfeof by Deed indented, 11 Eliz. Richard Birket to have and to hold to him and his Heirs, upon Condition, That the Feoffee or his Heirs, should reinfesoff the Feoffor for Life, the Remainder to John his Son and Heir apparent, and his Heirs, by Force whereof the said Feoffee was thereof seized in Fee, *post quod* *videm Feoffamentum*, the Jury found that the Feoffor entred, and took the Profits *absque contradictione, sine agreamen-* of the Feoffee; and afterwards, 11 Eliz. the Feoffor by

# WINNINGTON's Case. PART II.

by Deed indented made a Lease to D. and P. for Twenty one Years, and yet the Feoffor continued in Possession. *Birket* the Feoffee, 19 *Eliz.* acknowledged a Statute Staple to one J. The Feoffor, 24 *Eliz.* did enfeoff divers Persons to the Use of himself for Life, the Remainder to *Robert*, the second Son in Tail, the Remainder to *Thomas* his third Son in Tail. The Feoffor, 27 *Eliz.* died, *Birket* the Feoffee, after his Death, entred and enfeoffed *John* the eldest Son and his Heirs. *Robert* the second Son died without Issue, *John* had Issue *Julius*, and died. *Thomas* entred, and made the Lease to the Plaintiff, upon whom *Julius* entred, and ejected him, *Et si, &c.* And upon this special Verdict Sir *Richard Shuteleworth*, Justice of *Chester*, gave Judgment for the Defendant, upon which the Plaintiff brought a Writ of Error in the King's Bench. And in this Case these Points were moved and resolved by the whole Court.

First, When the Feoffor entred after the Feoffment, and took the Profits, and made a Lease for Years; upon all this Matter the Law doth adjudge it (a) a Disseisin, although the Intent of the Parties was, That the Feoffee should make a Demise to him for the Term of his Life: For this Entry by Wrong, and taking of the Profits without the Agreement of the Feoffee, is a Disseisin. And the Case is the stronger, because he took upon him as the Owner of the Land to make a Lease.

Secondly, It was agreed, That when he made the Lease for Years by Deed indented, he thereby dispensed with the Condition during the Term, so that during the Term he could not for any Cause take Advantage of the Condition.

Thirdly, When the Feoffor (b) disseiseth the Feoffee upon Condition, and during the Disseisin, the Feoffee acknowledged a Statute or Recognizance, the same is no (c) Disability in him, or any Cause for the Feoffor to re-enter; for the Feoffee having but a Right, the Possession in the Hands of the Disseisor is not subject to his Statute or Recognizance, and therefore no Cause of Entry for any Disability is given to the Feoffor in this Case: But when the Feoffee being in Possession takes a Wife, or grants a Rent Charge, or acknowledges a Statute, there the Land is presently subject to the Title of Dower, and charged with the Rent or Statute: But when the Feoffee is (d) disseised, and takes a Wife, or acknowledges a Statute, there the Land is not bound with it. And although it was strongly objected, That it was not possible that the Feoffee could perform the Condition, unless he enters, and if he enters the Land is charged, so he hath disabled himself to perform the Condition; yet it was resolved, That it was not any Disability until he enter in fact, so that the Possession of the Land be charged. But (e) if the Wife dies, or the Conusee releases the Statute, then the Feoffee might well enter and perform the Condition without any

(a) Cr. Car.  
303, 324.

(b) Co. Lit.

222. a.  
(c) 1 Co. 25. b.  
Perkins Sect. 801.  
Co. Lit. 221. a.  
b. 222. a.  
13 H. 7. 23. b.  
Br. Condition  
217. 44. Aff. 26.  
20 H. 6. 34. b.  
5 Co. 21. a.  
Cr. El. 450. 479.  
Hard. 396. Lit.  
Sect. 357, 358.  
2 Anderl. 18.  
Moor 452, 453.  
Hutt. 48. 1 Rol.  
447, 448. 3 Co.  
29. a. b. 10 Co.  
49. b. 1 Rol.  
Rep. 168.  
Br. Condition  
26.  
(d) Co. Lit.  
222. a.

(e) Co. Lit. 222.  
a.

any Disability; then when the Feoffor made a Feoffment over, he extinguished the Condition, so that when the Feoffmentred and enfeoffed *John* the eldest Son, he had a good and rightful Estate in the Land which descended to the Defendant; and so the Judgment given by Sir *Richard Shuttlesworth* was affirmed. The Attorney-General and *Tanfield*, were of Council with the Plaintiff, and *Hesket*, Attorney of the Court of Wards, and *Damport* with the Defendant.

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Hill.



## Hill. 41 Eliz.

*In the Common Pleas.*

## WISCOT'S Case.

Cr. El. 470. 481.  
3 Keb. 327.

(c) 2 Sand. 386.

(b) 2 Sand. 387.

Co. Lit. 182. a.

b. Raym. 36.

Dyer 12. pl. 57.

Lit. Sect. 283.

2 Jones 137.

(c) Cr. Eliz. 470.

1 Rol. 933, 934.

2 Sand. 386.

387. Raym. 413.

IN an *Ejectione firma*, between Giles Plaintiff, upon a Demise made to him by the Husband and Wife, and Wiscot Defendant, upon the General Issue a Special Verdict was found, upon which the Case was such: *A.* Tenant for Life, the Remainder to *B.* and three others (*a*) for Life, the Reversion to *C.* and his Heirs Expectant, *C.* levied a Fine *surconusans de droit come ceo, &c.* to *A.* and *B.* to the Use of *A.* for Life, and after his Death, to the Use of *B.* in Fee, *A.* died, and afterwards *B.* died; and whether the Jointure was severed or not, so that after the Death of *A.* *B.* was Tenant in common, was the Question. And it was resolved, That the Jointure was severed, and this Difference taken, when the Fee is limited by one (*b*) and the same Conveyance, there the one may have Fee-simple, and the other an Estate for Life jointly; but when they are (*c*) first Tenants for Life, and afterwards one of them doth get the Fee-simple, or the Fee-simple doth descend to one, there the Jointure is severed. As if a Man makes an Estate to three and to the Heirs of one of them, there one of them hath Fee-simple, and yet the Jointure doth continue, for all is but one entire Estate created at one and the same Time, and therefore the Fee-simple cannot merge the Jointure, which took Effect with the Creation of the Remainder in Fee; but when three are Jointenants for Life, and afterwards one purchaseth the Fee, or the Fee descends to him, there the Fee-simple merges the Estate for Life, for the

The Estate for Life was in *esse* before, and might be merged or surrendered, and so cannot the Estate for Life in the first Case. But in the same Case, that is to say, when an Estate is made to three, and to the Heirs of one of them, and he who hath the Fee dies, and one of the Survivors purchases the Remainder, the Jointure is severed, *causa qua supra*; And when one Tenant for Life purchases the Reversion in Fee, if the Jointure should remain, he would have a Reversion in Fee, and an Estate for Life also in Part, which Reversion in Fee he might grant over, and his Estate for Life would remain in Part, which would be absurd and against Reason; for in the first Case, when an Estate is made to three, and to the Heirs of one, he who hath the Fee cannot (a) grant over his Remainder, and continue in himself an Estate for Life, as it is held in 12 E. 4. 2. b. But if there be Tenant in Tail, the Remainder to his right Heirs, he may grant his Remainder over, or devise it, as it is held in (b) 27 Aff. 60. for an Estate Tail cannot be merged nor surrendered, nor extinguished by Accession of a greater Estate. *Vide* 42 E. 3. 9. b. 29 H. 8. *Mortdauncester* 59. 11 H. 4. 55. b. & 31 E. 3. *Scire facias* 19. by the better Opinion of all the Books, he who had the Fee died, and afterwards Tenant for Life died, it is at the (c) Election of the Heir to have a *Mortdauncester*, (which proves that his Ancestor died seized of the Fee) or a *Scire facias*, or a *Formedon* in remainder at his Pleasure. It is agreed 39 H. 6. 2. b. if the Reversion be (d) granted to Tenant for Life, and another in Fee, the Reversion is extinct for a Moiety, for Tenant for Life cannot purchase or get the Reversion or Remainder of the same Land, but the Estate for Life will be merged, having regard to the Estate which he hath gotten in the Reversion.

(a) Co. Lit. 182.  
b. Raym. 40.

(b) Br. N. C.  
115. Br. Aff.  
275. Br. De-  
vise 42. Br. Ti-  
tles 28.

(c) Co. Lit. 184.

(d) 1 Rol. 933.  
Co. Lit. 182. b.  
Raym. 36.

(e) 1 Rol. 934.  
Co. Lit.  
182. b. 2 Rol.  
Rep. 473.

(f) 7 H. 6. 2. b.

(g) Cr. El. 438.  
481. 656. 708.  
Cr. Car. 527.  
15 E. Dodrim placit.  
176. Palm. 268.

55. 102. Winch. 34. 1 Leon. 192. 204. 4 Leon. 50. Sav. 110. 1 Rol. Rep. 402. Plowd.  
2. Cr. Jac. 563. 3 Co. 21. b. Dyer 91. pl. 13.

(a) Cro. El.

(b) Cr. El.

(c) Cr. El.

(d) Cr. El.

(e) Cr. El.

(f) Cr. El.

(g) Cr. El.

(h) Cr. El.

(i) Cr. El.

(j) Cr. El.

(k) Cr. El.

(l) Cr. El.

(m) Cr. El.

(n) Cr. El.

(o) Cr. El.

(p) Cr. El.

(q) Cr. El.

(r) Cr. El.

(s) Cr. El.

(t) Cr. El.

(u) Cr. El.

(v) Cr. El.

(w) Cr. El.

(x) Cr. El.

(y) Cr. El.

(z) Cr. El.

(aa) Cr. El.

(ab) Cr. El.

(ac) Cr. El.

(ad) Cr. El.

(ae) Cr. El.

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(ba) Cr. El.

(bb) Cr. El.

(bc) Cr. El.

(bd) Cr. El.

(be) Cr. El.

(a) 15 E. 4. 18. a. & 21 H. 6. 24. b. But upon a Sight of a Judgment given Trin. 36 Eliz. in the King's Bench, between Bateman and Allen, Rot. 339. and of another President shewed by Brownlow chief Prothonotary, between (c) Mose-ly and Guilbert, Pasch. 33. Eliz. in the Common Pleas, and of another Judgment between (d) Digges and Withers, in the King's Bench, in all which Precedents Judgment was given for the Plaintiff upon a Demise made by the Husband and Wife, without alledging it to be by (e) Deed: Upon the View of which Precedents Judgment was given in the Case at Bar for the Plaintiff.

Michael



*De Termino Sancti Michaelis  
Anno Regni Dominae Elizabethae  
nunc Reginae Angl' 36 &  
37. Rotul. 136.*

**M**emorand' quod alias scil' termino Pasch. ultimo præ-<sup>Devon' ff</sup>terito coram dom' Reg. apud Westm' ven' Will' Rud per Michaellem Bland attorn' suum. Et protulit hic incur' dict' dom' regin' tunc ib'm quand' billam suam vers. Edw' Tooker in custod' Marr', &c. de pl'ito transg'. Et sunt pleg' de prof. sc. Jo. Doo, & R. Roo. Quæ quidem billa sequit' in hæc verba, ff. Devon' ff. Willihelmus Rud querit' de Edward' Tooker in custod' Marr' Marefc' domin' reg' coram ipsa reg' existen', de eo quod ipse primo die Aprilis anno reg' dom' Eliz. nunc regin' Angliæ tricesimo sexto, vi & armis, &c. clausum & domum ipsius Willihelmi voc' **Berton Land**, alias **the Barton of Sprecombe** apud Morthoe in comitatu præd' fregit & intravit & herbam suam de valenc' centum marcarum in clauso prædicto ad tunc nuper crescentum quibusdam averiis, viz. equis, bobus, vaccis, porcis, & bibentibus depast' fuit conculcavit & consumpsit, Et alia enormia ei intulit contra pacem dict' domin' reg' nunc, ad dampn' ipsius Wil. cent' libr', Et inde produc' sect', &c. Et modo ad hunc diem, sc. diem Merc. proxim' post Octab' sancti Michael' isto eodem termin', usq; quem diem præd' Edwardus habuit licenc' ad billam præd' interloquendi, & tunc ad respondend', &c. coram dom' regin' apud Westm' ven' præd' Will. per attorn' suum præd', quam præf. Edward. per Johannem Halstasse attor' suum. Et idem Edward. defend' vim & injur' quando, &c. Et dic' quod ipse non est inde culpabilis. Et de hoc ponit se super patriam. Et præd' Will. similiter, &c. Ideo ven' inde Jur' coram domina regina, apud Westm' die Veneris proxim' post quindenam sancti Hillarii. Et qui nec, &c. Ad recogn', &c. Quia tam, &c. Idem dies dat' est part' præd' ib'm, &c. Postea continuat' inde process. inter part' præd' de pl'ito præd' Jur' posit' inde inter eas in respect' coram dom' reg' apud Westm' usque diem Mercurii prox' post quindenam Pasc' tunc sequen', Nisi Just' dom' reg' ad Assisas in comitatu præd' capiend'.

capiend' assign' prius die Lunæ decimo die Martii apud castrum Exon. in com' præd' per form' statuti, &c. ven' pro defectu Jur', &c. Ad quem diem coram dom' regina apud Westm' ven' partes præd' per attornat' suos prædictos, Et præf. Just' ad Assisas coram quibus, &c. miserunt hic recordum suum coram eis habitum in hæc verba. ff. Postea die, & loco infracontent' coram Edmundo Anderson Milite capitali Justic' dom' reginæ de banco, & Thoma Wal-mesley uno Just' dictæ dom' reginæ de banco Justic' ejusdem dom' reginæ ad Assisas in com' Devon' capiend' assign' per formam statuti, &c. ven' tam infranominat' Willihelmus Rud per Erasmus Forde attorn' suum, quam infra-script' Edwardus Tooker per Thomam Clayton attor' suum: Et Jur' jurat' unde infra fit mentio exact' quidam eorum, viz. David Maticot de Saint Gyles, Johannes Hayman de Shelbery, Johannes Hooper de Westdowne, Richardus Clyeff de Chaxford, Johan' Row de eadem, & Johannes Hole de Drewesteynton venerunt, & in Juratam præd' jurati existunt: Et quia resid' Jur' ejusdem juratæ non comperuer'; Ideo alii de circumstan' per Vic' Com' præd' ad hoc electi ad requisitionem præd' Will' Rud, Ac per mandat' Justic' prædictorum de novo apponuntur, quorum nomina pannello infrascr' affilantur secundum form' statuti in hujusmodi casu nuper edit' & provis'. Ac Jur' sic de novo apposit', viz. Georgius Snell, Johannes Barnacot, Johan' Shute, Georgius Slade, Will' Killand, & Christopherus Cheeke exact' similiter vener', qui ad veritatem de infracontent' simul cum aliis Jur' præd' prius impannellat' & jurat' dicend' electi, triati, & jurati, dicunt super sacrament' suum quod ante infrascr' tempus quo supponit' transgr. infra-spec' fieri, quidam Johan' Arundell armiger fuit seifitus de tenement' infra-script' cum pertin' in quibus supponit' transgr' infra-spec' fieri in dominico suo ut de feod', Et sic inde seifit' existen', postea & ante infrascr' tempus quo, &c. sc. tertio die Jul' anno regni dom' Hen' nuper Reg' Ang' octavi tricesimo dimisit cuidam Johan' Tooker ac infranominat' Willmo Rud tenement' infra-script' cum pertin' in quibus, &c. inter alia, Habendum & tenendum eisdem Johan' Tooker & Willielmo Rud pro termino vitarum eorundem Johannis & Willielmi, & alterius eorum diutius viven', virtute cujus dimissionis iidem Johan' Tooker & Willihelmus Rud fuer' seifit' de tenementis infra-script' cum pertin' in quibus, &c. in d'nico suo ut de liber' tenemento pro termino vitarum eorundem Johan' & Willielmi & alterius eorum diutius viven', Et sic inde seifit' existen', ac præd' Johann' Arundel de reversione tenementor' infrascr' cum pertin' in quibus, &c. seifit' existen', Idem Johan' Arundell postea



& ante infraſcript' tempus quo, &c. apud Morthoe infraſcript' de tali ſtatu ſuo obiit inde ſeiſit', poſt cujus Mortem præd' reverſio tenementorum infraſcript' cum pertin' in quibus, &c. inter alia deſcendebat cuidam Joh' Arundell Militi, ut filio & hæred' prædicti Johan' Arundell, per quod idem Johan' Arundell Miles fuit ſeiſitus de prædicta reverſione tenementorum infraſcript' cum pertin' in quibus, &c. inter alia ut de feodo, & ſic inde ſeiſit' exiſten', poſtea & ante infraſcript' tempus quo, &c. ſc. 20. die Septembris, anno regni dominæ Reginæ nunc 10. apud Morthoe infraſcript' per quoddam ſcriptum ſuum indentat', cujus altera pars ſigillo præd' Johan' Arundell Milit' ſignat' Jurat' præd' in evidentiis oſten' fuit, cujus dat' eſt eiſdem die & ann' conceſſit reverſionem tenentor' infraſcript' cum pertin' in quibus, &c. inter alia eidem Edward' Tooker: Habendum & tenendum eandem reverſionem tenementorum infraſcript' cum pertinentiis in quibus, &c. inter alia eidem Edward' Tooker pro termino vitæ ſuæ, cum poſt mortem, reſeſſ. ſurſumreddition', vel foriſfacturam præd' Johan' Tooker & Will' Rud acceder', prout per idem ſcriptum Indentat' inter alia plenius apparet: Ad quam quidem conceſſionem reverſionis tenementorum infraſcript' cum pertinentiis in quibus, &c. inter alia eidem Edward' per præf. Johan' Arundell Militem in forma præd' factam, præd' Joh' Tooker exiſten' tenen' tenementorum infraſcript' cum pertinentiis in quibus, &c. pro termino vitæ ſuæ conjunctim cum præf. W. Rud poſtea & ante infraſcript' tempus quo, &c. apud Morthoe infraſcript', ſe præf. Edwardo inde attornavit & agreavit quorum quidem conceſſionis reverſionis præd' ac attornamenti & agreamenti præd' prætextu, præd' Edwardus fuit ſeiſit' de reverſione tenementorum infraſcript' cum pertinentiis in quibus, &c. prout lex poſtulat ut de libero tenemento pro termino vitæ ſuæ: Et ſic inde ſeiſit' exiſten', ac præd' Johan' Tooker & Willihelm' Rud de tenementis infraſcript' cum pertinentiis in quibus, &c. inter alia ſeiſit' exiſten', idem Johan' Tooker poſtea & ante infraſcript' tempus quo, &c. ſcilicet 14. die Decembris, anno regni dictæ dominæ Reginæ nunc 31. apud Morthoe infraſcript' fec' præfat' Edwardo Tooker quoddam ſcriptum ſurſumredditionis de tenementis infraſcript' cum pertinentiis in quibus, &c. inter alia, quod Jurat' prædictis in evidentiis oſtenſ. fuit, cujus tenor ſequitur in hæc verba.

To all Chriſtian People to whom this preſent Writing ſhall come: I. Tooker of Morthoe in the County of Deben Peoman, ſendeth Greeting in our Lord God Everlaſting. Whereas the ſaid John Tooker and Wil. Rud, have and do hold



hold jointly for Term of their Lives, and the Life of the longest Liver of them, all that Capital Messuage and Lands, Tenements and Hereditaments, called Barton Land, in the Mannor of Spzecombe, or Parcel of the said Mannor, and all those Lands, Tenements, and Hereditaments, with the Appurtenances in Hokesmill, with the Pasture of Hokeswood, and common of Pasture upon Hokesdowne, Parcel of the said Mannor of the Demise and Grant of J. Arundell Esquire, as by the Deed of the Demise and Grant thereof made by the said J. Arundell at large, and plainly it doth and may appear: Now know ye, that the said J. Tooker, for divers and sundry Causes and Considerations him moving, doth by these Presents surrender and yield up unto E. Tooker, the Son of the said J. Tooker, to whom the Reversion of all and singular the Premises is granted and doth belong for Term of the Life of the said Edward, all his Estate, Title and Interest in and to the Premises, and in and to every Part and Parcel thereof, in as large and ample Manner as he the said John Tooker can or may surrender the same. In Witness whereof the said J. Tooker to these Presents hath set his Seal. Given the xiv. Day of December, in the xxi. Year of the Reign of our Sovereigne Lady Elizabeth, By the Grace of God, of England, France, and Ireland, Queen, Defender of the Faith, &c.

Et ulterius Jur' præd' dicunt super sacrament' suum præd' quod præd' Johan' Tooker postea & ante infrascr' tempus quo, &c. apud Morthoe infrascr' obiit, quodque præd' Edwardus postea sc. infrascr' primo die Aprilis, anno regni dictæ dom' reg' nunc 36. infra spec'. clam' habere & occupare tenementa infrascr' cum pertin' in quibus, &c. inter alia in communi cum præf. Will' Rud, virtute prædicti scripti fursum reddition' sibi per præf. Johan' Tooker in forma præd' facti in tenementa infrascr' cum pertin' in quibus, &c. super possession' præd' Will', &c. intravit, & herbam infra spec' ad valenc', &c. in clauso infrascr' ad tunc crescent' cum averiis infrascr' depastus fuit conculcavit & consumpsit, prout præd' Will' Rud interius vers. eum queritur: Sed utrum super tota materia præd' informa præd' comperta, præd' intratio præd' Edwardi in tenementa infra script' cum pertin' in quibus, &c. sit bona & legitima intratio in lege necnon iidem Jur' penitus ignorant; Et inde pet' advisament' & considerat' cur', &c. Et si super tota materia præd' in forma præd' comperta, videbitur Justic' & cur' hic quod prædicta intratio præd'

præd' Edwardi in tenementa infrascript' cum pertin' in quib', &c. in & super possession', præd' Willihelmi Rud inde non sit bona & legalis intratio in lege, tunc iidem Jur' dicant super sacramentum suum quod præd' Edw' Tooker est culpabilis de transgr' infrasp'ec', prout præd' Will' Rud interius vers. eum queritur; Et assid' dampn' ipsius Will' Rud occasione transg' infrasp'ec' ultra mis. & custag' sua per ipsum circa festam suam in hac parte apposit' ad 6 d. & pro mis. & custag' illis ad 20 s. Et si super tota materia præd' in forma præd' comperta videbitur Justic' & cur' hic quod præd' intratio præd' Edward' in tenementa infrascr' cum pertin' in quibus, &c. in & super possession' præd' Will' inde sit bona & legalis intratio in lege, tunc iidem Jur' dic' super sacrament' suum præd' quod præd' Edward' non est culpabilis de transg' infrasp'ec' prout idem Edward' interius allegavit. Et quia cur' dict' dom' Reginae hic de judicio suo de & super præmiss. reddend' nondum advisatur, dies inde dat' est partibus præd' coram domina Regina apud Westm' usque diem Sabbat' proxim' post octab' S. Michaelis de judicio suo de & super præmiss. audiendo, eo quod curia dominae Reginae hic inde nondum, &c. Ad quem diem coram domina Regina apud Westm' præd' ven' partes præd' per attornat' suos præd', Et quia cur' dom' Reginae hic de judicio suo de & super præmiss. reddendo nondum advisatur, dies inde ulterius dat' est partibus præd' coram domina Regina apud Westm' prædictum usque diem Lunæ proxim' post octab' S. Hillarii de judicio suo de & super præmissis audiendo, &c. eo quod cur' dominae Reginae hic inde nondum, &c. Ad quem diem coram domina Regina apud Westm' prædictum ven' partes prædictæ per attornat' suos prædictos, Et quia cur' dominae Reginae hic de judicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus præd' coram dom' Regina apud Westm' præd' usque diem Mercurii proxim' post xv. Paschæ de judicio suo de & super præmissis audiendo, &c. eo quod cur' dom' Regin' hic inde nondum, &c. Ad quem diem coram dom' Regina apud Westm' præd' ven' partes præd' per attornat' suos præd', Et quia cur' dominae Reginae hic de judicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus præd' coram domina Regina apud Westm' præd' usq; diem Veneris proxim' post crastin' S. Trin' de judicio suo de & super præmiss. audiendo &c. eo quod cur' dom' Reg' hic inde nondum, &c. Ad quem diem coram dom' Reg' apud Westm' præd' ven' partes præd' per attor' suos præd', Et quia cur' dom' Reg' hic de judicio suo de & super præmiss. reddendo nondum advisatur, dies inde ulterius



alterius dat' est partibus prædict' coram Domina Regina apud Westm' prædictum usque diem Veneris proximum post crastinum S. Trinitatis de iudicio suo de & super præmissis audiendo, eo quod Cur' dom' Regine hic inde nondum, &c. Ad quem diem coram domina Regina apud Westm' ven' partes prædict' per attornat' suos prædictos, Et quia Cur' dictæ domine Regine hic de iudicio suo de & super præmissis reddend' nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina Regina apud Westm' prædictum usque diem Sabbat' proxim' post Octab' S. Michaelis de iudicio suo de & super præmissis audiendo, eo quod Curia domine Regine hic inde nondum, &c. Ad quem diem coram domina Regina apud Westm' prædict' ven' partes prædict' per attornat' suos prædictos, Et quia Cur' Domine Regine hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina Regina apud Westm' prædictum usque diem Lunæ proxim' post Octab. S. Hillarii de iudicio suo de & super præmissis audiendo, eo quod cur' domine Regine hic inde nondum, &c. Ad quem diem coram domina Regina apud Westm' prædictum ven' partes prædictæ per attornat' suos prædictos, Et quia cur' Domine Regine hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina Regina apud Westm' prædict' usque diem Mercurii proxim' post xv. Pasche de iudicio suo de & super præmissis audiendo, eo quod cur' domine Regine hic inde nondum, &c. Ad quem diem coram domina Regina apud Westm' prædict' ven' partes prædict' per attornat' suos prædictos, Et quia cur' domine Regine hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina Regina apud Westm' prædict' usque diem Veneris proxim' post crastin' S. Trin' de iudicio suo de & super præmissis audiendo, eo quod cur' domine Regine hic inde nondum, &c. Ad quem diem coram domina Regina apud Westm' prædict' ven' partes prædict' per attornat' suos prædictos, Et quia cur' domine Regine hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina Regina apud Westm' prædict' usque diem Lunæ proxim' post Octab' S. Michaelis de iudicio suo de & super præmissis audiendo, eo quod cur' domine regine hic inde nondum, &c. Ad quem diem coram domina regina apud Westm' prædict' ven' partes prædict' per attornat' suos prædictos, Et quia cur' domine regine hic de iudicio suo de & super præmissis reddendo nond' advisatur, dies inde ulterius dat' est partibus præd' coram dom' reg' apud Westm' prædict' usq; diem Lunæ proxim' post Octab. S. Hill' de iudicio suo de



& super præmissis audiendo, eo quod Cur' dictæ dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Westm' prædict' ven' partes prædict' per attornatos suos prædictos, Et quia Cur' dominæ reginæ hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina regina apud Westm' prædictum usque diem Mercurii proxim' post xv. Paschæ de iudicio suo de & super præmissis audiendo, eo quod curia dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Westm' prædict' ven' partes prædict' per attorn' suos prædict', Et quia curia dict' dom' reg' hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina regina apud Westm' prædictum usque diem Veneris proxim' post crastinum S. Trinitat' de iudicio suo de & super præmissis audiendo, eo quod cur' dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Westm' prædictum ven' partes prædictæ per attornat' suos prædict', Et quia cur' dict' dom' reg' hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina regina apud Westm' prædict' usque diem Lunæ proxim' post octab. S. Michaelis de iudicio suo de & super præmissis audiendo, eo quod cur' dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Westm' prædict' ven' partes prædict' per attornat' suos prædict', Et quia cur' dominæ reginæ hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina regina apud Westm' prædict' usque diem Martis proxim' post octab. S. Hill' de iudicio suo de & super præmissis audiendo, eo quod cur' dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Westm' prædict' ven' partes prædict' per attorn' suos prædict', Et quia cur' dict' dom' reg' hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina regina apud Westm' prædictum usque diem Mercurii proxim' post quinden' Paschæ de iudicio suo de & super præmissis audiendo, eo quod cur' dominæ reginæ hic inde nondum, &c. Ad quem diem coram domina regina apud Westm' prædict' ven' partes prædict' per attornat' suos prædictos, Et quia curia dominæ reginæ hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina regina apud Westm' prædict' usque diem vener' proxim' post crastinum S. Trin' de iudicio suo de & super præmissis audiendo, eo quod cur' dom' reg' hic inde nondum, &c. Ad quem diem cor' dom' reg' apud Westm' prædict' ven' partes prædict' per attornatos suos prædict', Et quia cur' dictæ do-

minz reginz hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina regina apud Westm' prædictum usque diem Martis proxim' post octab. S. Michaelis de iudicio suo de & super præmissis audiendo, eo quod curia dominz reginz hic inde nondum, &c. Ad quem diem coram domina regina apud Westm' prædict' ven' partes prædict' per attornat' suos præd', Et quia curia dictz dominz reginz hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus præd' coram domina regina apud Westm' prædictum usque diem Mercurii proxim' post octab. S. Hillarii de iudicio suo de & super præmissis audiendo, eo quod curia dominz reginz hic inde nondum. Ad quem diem coram domina regina apud Westm' prædictum ven' partes prædictz per attornat' suos præd', Et quia curia dictz dominz reginz hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus præd' coram domina regina apud Westm' præd' usque diem Mercurii proxim' post xv. Paschæ de iudicio suo de & super præmissis audiendo, eo quod curia dominz reginz hic inde nondum, &c. Ad quem diem coram domina regina apud Westm' præd' ven' partes prædict' per attornat' suos prædict', Et quia curia dominz reginz hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus præd' coram domina regina apud Westm' præd' usque diem Veneris proxim' post crastinum S. Trinitat' de iudicio suo de & super præmissis audiendo, eo quod curia dominz reginz hic inde nondum, &c. Ad quem diem coram domina regina apud Westm' præd' ven' partes præd' per attornat' suos præd', Et quia curia dictz dominz reginz hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina regina apud Westm' prædictum usque diem Jovis proxim' post octabas Sanct' Michaelis de iudicio suo de & super præmissis audiendo, eo quod curia dominz reginz hic inde nondum, &c. Ad quem diem coram domina regina apud Westm' præd' ven' partes præd' per attornat' suos prædictos, Et quia curia dominz reginz hic de iudicio suo de & super præmissis reddendo nondum advisatur, dies inde ulterius dat' est partibus prædict' coram domina regina apud Westm' prædict' usque diem Veneris proxim' post octab. S. Hillarii de iudicio suo de & super præmissis audiendo, eo quod curia dominz reginz hic inde nondum, &c. Ad quem diem coram dominz reginz apud Westm'

Westm' præd' venerunt partes præd' per attorn' suos præd':  
Super quo vis. & per curiam dictæ dominæ reginæ nunc hic  
plenius intellectis omnibus & singulis præmissi. maturaq; de-  
liberatione inde habita, pro eo quod videtur eidem curiæ  
dictæ dominæ reginæ & Justic' hic quod præd' intracio præd'  
Edw. in tenement' præd' cum pertin' in quibus, &c. in &  
super possessionem præd' Wil. inde sit bona & legalis intra-  
cio in lege: Ideo concessum est quod præd' Will. nihil capiat  
per billam suam prædictam, sed pro falso clam' suo sit inde in  
misericordia. Et præd' Edw. eat inde sine die.

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K 2

Hill.



## Hill. 43 Eliz. Reg.

## TOOKER's Case.

**Cro. El. 737, 802** **I**N an Action of Trespass for breaking of his Close, in the King's Bench, between *William Rud* Plaintiff and *Edward Tooker* Defendant, which began *Mich. 36 & 37 Eliz. Rot. 136.* upon Not guilty pleaded, a special Verdict was found, and upon the whole Matter the Case was shortly such: *John Arundel*, Esq; was seised of the Barton of *Sprecomb* in *Morthoe* in the County of *Devon* in Fee, and demised it to *John Tooker* and to the said *William Rud* for the Term of their Lives, and died; after whose Death the Reversion descended to Sir *John Arundel*, as his Son and Heir, who by Deed indented granted to the said *Edward Tooker* the Reversion of the said Barton for Term of his Life, to which Grant, the said *John Tooker* then being jointly seised of the said Barton, with the said *William Rud*, did attorn; And afterwards the said *John Tooker*, by his Deed, surrendered to the said *Edward Tooker* all his Estate, Title, and Interest in the said Barton, and died: The said *Edward Tooker* entered into the said Barton, claiming to hold in common with the said *William Rud*, and whether his Entry was lawful or not, was the Question. And the Point was, whether by the Attornment of one Tenant for Life, the Reversion was vested in *Edward Tooker* or not. For if the Attornment of one doth not vest the Reversion in him, then the Surrender aforesaid made to him was void. And after many Arguments at the Bar by the Parties Counsel, and at the Bench by the Justices, Judgment was given against the Plaintiff. And in this Case two Points were resolved by the Court.

**(a) Cro. El. 802.** First, That the Attornment of one (a) Tenant for Life shall vest the whole Reversion in the Grantee for diverse Reasons, because the Estate of Joint-Lessees is intire; for every Joint-Tenant is seised *per (b) my & per tout*, and by Consequence the Reversion which is dependant and expectant upon such Estate is intire also.

**(b) Cro. El. 802.**

Secondly

Secondly, The Attornment is a lawful Act: 3. The Attornment doth not pass any (a) Interest from him who attorns, (a) 9 Co. 85. but only perfects a Grant made by another. See 7 H. 6. 34. 8 E. 3. 38. Fitz. Dower 110. 10 E. 2. Dower 139. If one (b) Joint-Tenant assign Dower, it is good. So Dower assigned by an Abator or (c) Disseisor shall not be avoided by the Disseisee, as it is agreed in 12 Aff. 20. for these are lawful Acts. So it was said by the same Reason: If a (d) Disseisor attorns or gives Seisin to the Grantee of a Seignior, it shall bind the Disseisee, yet the Grantee of the Seignior cannot compel the Disseisor to attorn to him, or to give him Seisin, if he had not Seisin before within Time of Limitation. See for that 8 H. 6. 17. 8 Aff. 16. 8 E. 3. 52. 11 H. 4. 29. 39 H. 6. 2. b. And it was said, if the Lessor, Disseises his two Lessees for Life, and enfeoffs another, and one (e) Lessee re-enters, this Act of the one is an Attornment in Law by both. Ergo, an express Attornment of one shall bind both. So if one Joint-Tenant gives Seisin of the Rent to the Lord, it shall bind his Companion, as it is agreed in 39 H. 6. 2. b. If a Lease be made to two, and afterwards the Reversion is granted to one of them, and he (f) accepts the Deed, Baldwin 28 H. 8. Dyer 12. b. held it a good Attornment in Law for both; which Opinion was affirmed for good Law by Popham Chief Justice and the whole Court. And in 4 E. 3. 22. b. in Holland's Case it is said, That the Attornment of one Joint-Tenant is the Attornment of the other. Littleton Ch. Attornment 129, holdeth, That if there be Lord and two (g) Joint-Tenants by certain Services, and the Seignior is granted over, and one Joint-Tenant attorns, it is as good as if both had attorned, because the Seignior is intire; which Opinion of Littleton in his (h) Book (which is the Ornament of the Common Law, and the most perfect and absolute Work that was ever written in any human Science) the Court did prefer before the sudden Opinions in 39 H. 6. 2. b. & 32 E. 3. (i) *Quid juris clamat* 5. But if the Reversion of two Tenants for Life, or the Rent, or Seignior of two Joint-Tenants be granted by Fine, there in a *Quid juris clamat*, *Quem redditum reddit*, or *Per qua servitia* against such Joint-Tenants, the one shall not be suffered to attorn without his Companion for two Reasons:

1. Because the Plaintiff ought to have Attornment in the same Manner as he himself hath demanded it, as it is held in 9 H. 6. 21. b.

2. If one attorns only, he may prejudice his Companion: as if he will not (k) claim to be unpunished for Waste, or a Condition to have Fee, or future Term, &c. for upon a general Attornment in a Court of Record, the Lessee shall lose all Advantages which are not claimed

(b) Co. Lit. 34.  
b. 35. a. Bridgm.  
130.

(c) Co. Lit. 357.  
b. 5 Co. 30. b.  
6 Co. 58. a. Br.  
Dower 59. Br.  
Affise 181. Br.  
Damages 96.

(d) Co. Lit. 312.  
b.

(e) Co. Lit. 319.  
a.

(f) Leon 279.  
Dyer 12. pl. 57.  
Cr. El. 802. Lit.  
Sect. 559. Lit.  
fol. 127. b.

(g) Co. Lit. 319.  
a. Lit. Sect. 566.  
Lit. f. 128. b.

(h) Praef. Co.  
Lit. Co. Lit. 311.  
a.

(i) Cro. Eliz. 737.

(k) 9 Co. 85.  
Co. Lit. 322. b.



# TOOKER'S Case. PART II.

of Record; for the Question is demanded of him, *Quid juris clamat?* And therefore he shall not have more than he claims of Record; and for this Cause one Joint-Tenant only shall not be suffered to attorn of Record for the manifest Prejudice which might accrue to his Companion if it should be the Attornment of both. But in the Case of a Grant by Deed, no such Prejudice can happen, and therefore the Attornment of one shall bind both, because it cannot prejudice his Companion. So, and for the same Cause, if one (a) Joint-Tenant attorns *in pais* to the Conusee where the Grant is by Fine, it shall bind both. And in Proof that the Reversion in the Case at Bar was intire, to follow the Reason of *Littleton*, it was said, If (b) Husband and Wife be Joint-Tenants for Life, and the Lessor grants the Reversion of the Land which the Husband holdeth for Life, the Grant is void; as it is agreed in 13 E. 3. Grants 63. The same Law as it was agreed by *Popham* Chief Justice, and the whole Court of two Joint-Tenants Lessees. See 32 E. 3. *Quid juris clamat* 5. So if a (c) Man holds three Acres by 12d. and the Lord grants the Services of the third Acre, the Grant is void; as it is agreed in 27 E. 3. 79. and 7 E. 4. 25. a.

Secondly, It was resolved by the Court, that if the Tenant having perfect (d) Notice of the Grant (as he by Law ought to have, as it was agreed in *Vivian's Case* 13 *Eliz. Dyer* 302.) there, if the Tenant gives his Assent, or attorns for any Part, it is good for (e) the whole, for in as much as an Attornment is but an Assent to perfect the Grant of another, he who attorns cannot apportion, divide, or alter the Grant, but the Attornment ought to be according to the Grant; and therefore if he attorns in Part, it shall not be taken void, but shall be taken strongest against him, and shall be in Law an Attornment for the whole, and herewith agrees *Littleton Attorn*, 127. And therefore if a (f) Reversion or Seigniorie be granted to two, and the Tenant attorns to one of them, it is good to both against the Opinion of *Hussey* and *Danvers*, 11 H. 7. 12. b. So if the (g) Reversion of 3 Acres be granted, and the Lessee attorns for one of them, it is good for all, vi. 18 E. 3. *Variance* 63. and 22 E. 3. 18. So if a Reversion be granted for 40 Years, and the Lessee attorns for Part of the Years, it is good for all. So if it be granted for Life, (h) with divers Remainders over, if the Lessee attorns to the Grantee for Life only, yet it shall enure to all in the Remainder. But if a Reversion be granted for Life, the Remainder in Fee by Deed, and the Grantee for Life (i) dies, the Attornment to him in the Remainder is void, for it is not according to the Grant: Otherwise, if the Grant was by (k) Fine, for there, by the Fine, the Estate was vested in them, and the Attornment was only to make Privy; but if the Reversion be granted to two, and one dies, there the At-

(a) 1 Rol. 302. b.  
3. Co. Lit. 415. a.  
Cro. El. 737.

(b) Plowd. 162.  
b. Br. Grants  
127. Br. Joint-  
Tenants 63.  
(c) Fitz. Grant.  
19. Plowd. 162.  
b.

(d) Co. Lit. 309  
b. 6 Co. 69. 2.  
Dyer 302. pl. 43.  
Postea 68. b.  
5 Co. 113. b.

(e) Co. Lit. 309.  
b. 314. a.

(f) Co. Lit. 310.  
a.

(g) Co. Lit. 309.  
b.

(h) Co. Lit. 310.  
a.

(i) Co. Lit. 309.  
a. b. 310. 2. Lane  
36. 1 Co. 104. b.  
355. b. 9 E. 4. 39.  
2. Lit. Sect. 551.  
568. Br. Attorn-  
ment 55. Br.  
Disseisin & Dis-  
seisor 61.  
(k) 2 Rol. Rep.



attornment to the Survivor is good. So if (a) a Reversion be granted to J. S. and J. G. and afterwards they intermarry, and the Tenant attorns, now they shall not have Moieties according to the Purport of the Grant, but that is by the Act of the Grantees themselves. And if the Lessee attorns upon any Condition subsequent, the (b) Condition is void; for if the Reversion be once vested, it cannot be divested by any Condition annexed to the Attornment, because the Grantee is not in by him, but by the Grantor; but if one attorns upon a Condition precedent, there it is no Attornment till the Condition be performed. But in all the Cases aforesaid, if the Tenant hath Notice that the Seignior was granted but to one, or that the Reversion was granted but of one Acre, or that the Reversion was granted for fewer Years, or that the Reversion was granted for Life only with no Remainder over, there general Attornment without true Notice of the Grant, is void; for the usual Pleading (the sure Oracle of Law) is, (c) to which Grant he attorned; and therefore if he hath no Notice of the Grant, or if he hath not true Notice of the Grant, which is all one, his Assent which he gives to that, which in Truth was but Part of the Grant, the Law (which abhors Falsity) will not construe it to be an Attornment to the true Grant. And *Popham, C. J.* said, that every Act done by one Joint-Tenant in (d) Benefit of himself and his Companion, is good; as (e) Payment of Rent, &c. to the Lord by one, doth discharge the other: But one Joint-Tenant cannot prejudice his Companion as to (f) any Matter of Inheritance or Freehold, but as to the Profits of the Freehold, the one may prejudice the other; for there is a Privy and Trust between Joint-Tenants, and therefore if one takes all the (g) Profits of the Land, or the whole Rent, &c. the other hath no Remedy; for it was his Folly to join himself in Estate with such a Person as would break the Trust. And he said, if (h) two Joint-Lords and Tenants be by Knights Service, and the Tenant dies, his Heir within Age, now the Lords have Election either to seise the Ward, or to distrain for the Services, and so waive the Wardship, as it is agreed in 1 E. 3. But he said, if one Lord seises the Ward, and the other Lord distrains for the Services, he who first seised or distrained, shall bind the other. Also in personal Actions, one Joint-Tenant may release all; but if the Personalty be mixed with the Reality, it is otherwise, as in Assise by two, the (i) Release of all Actions personal by one, is no Bar against the other; for although the Assise is an Action mix'd in the Reality and Personalty, yet (k) *omne majus trahit ad se minus*, as it is adjudged in 30 H. 6. Bar. 59. So in a Writ of (l) Right of Ward for the Body brought by two, the Release of the one shall not prejudice the other, but shall give his Companion the whole Ward, as it is held in

(a) Plow. 483.  
Co. Lit. 187. b.  
310. a.

(b) 5 Co. 81. a. b.  
9 Co. 85. b.  
Co. Lit. 274.  
b. 297. a. 300. b.  
1 Rol. 412. M. 1.

(c) Co. Lit. 309.

(d) Cr. El.  
803. Bridgman  
129.

(e) Bridgm. 129.

(f) Cr. El. 737.  
803.

(g) Cro. El. 803.  
Bridgm. 129.

(h) Cro. El. 803.  
Bridgm. 129.

(i) 5 Co. 97. b.  
2 Rol. 411. Co.  
Lit. 285. a. 18 E.  
4. 14. a.

(k) Co. Lit. 52.  
b. 285. a. 5 Co.  
115. a. 6 Co. 43.  
b. 1 Bulst. 105.  
2 Bulst. 48. 3 Inst.  
109.

(l) Firz. Gard.  
100. Br. Gard. 13.  
Co. Lit. 285. a.  
Br. Severance. 5.

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45 E. 3. 10. a. & 30 H. 6. Bar. 59. But in an Action of Waste brought by two, the Release of one shall bar the other, as it is held in (a) 9 H. 5. 15. a. *per Curiam*. for in Waste the Personalty is the Principal. But note, Reader, If in a (b) *Quid juris clamat*, the Defendant, as to Parcel, is ready to attorn; and, as to the Residue, claims Fee; there he shall be admitted to attorn for Parcel, because he shall never attorn for the Residue; for if it be found with the Plaintiff, he shall enter for the (c) Forfeiture; and if it be found with the Defendant, he shall never attorn, but when to Parcel he is ready to attorn; and as to the Residue, (d) pleads such a Plea, that if it be found against him, he shall attorn; There the Attornment shall not be taken by Parcels, 11 H. 4. 57. a. b. 11 R. 2. b. *Attornment* 9. 22 E. 3. 18. b. And it is true, that to every Attornment, true Notice of the Grant is requisite; but it is to be understood, that there is a Notice in Fact and a Notice in Law; For in some Cases the Law will imply Notice without any express Notice given by any Person, as in the Case of *Littleton*, *Attornment* 130. If he (f) in the Reversion ousts his Lessee for Life, and makes a Feoffment in Fee, and the Lessee re-enters, it is a good Attornment; and yet perhaps he had not Notice neither of the Feoffment nor of the Estate given by the Feoffment. And *Littleton* gives two Reasons for it.

1. Because the Lessee by Law should not be ignorant (Note, the Law implies Notice) of Feoffments which are made of and upon the same Land.

2. By his Re-entry, he caused the Reversion to be to him to whom the Feoffment was made, who was seised in Demesne, and had not any Reversion before. And with *Littleton* agrees the whole Court in 9 H. 6. 16. a. b. And that the Argeement of the Lessee there pleaded upon his Re-entry was not material, for without it the Justices were agreed, that the Reversion and the Rent were in the Feoffee, and 18 E. 3. *Feoffments & Faits* 62. acc. *per Wilby & omnes*, And although *prima facie* in 2 H. 5. 4. a. b. the Court thought it was not an Attornment; yet afterwards in 5 H.

5. 12. a. b. it is adjudged, that the (g) Re-entry is a good Attornment, and that the Action of Waste brought by the Feoffee was maintainable, 46 E. 3. 30. b. & 34 H. 6. 6. b. acc. And there it is said, that if the Lessee for Life recovers in Assise against the Feoffee, it shall not be an Attornment. And

(a) Br. Waste 73.  
Fitz. Waste 171.  
(b) F. N. B. 147.  
a. Fitz. quid juris  
clamat. 13. 33.  
Br. quid juris  
clamat 10. Br.  
Attornment 50.

(c) 1 Rol. 853.

(d) 1 Rol. 299.

(e) Antea 67. b.  
Co. Lit. 309. b.  
5 Co. 113. b.  
5 Co. 69. a. Dyer  
803. pl. 43.

(f) Co. Lit. 318.  
b. 319. a.  
Lit. Sect. 576.

(g) Co. Lit. 318.



And if the Tenant hath Notice of the Grant by a Stranger, Cr. Car. 441.  
he may attorn, and assent to the Grant in the Absence of 1 Rol. 295. 300.  
the Grantee, and Popham Chief Justice said, it had been Co. Lit. 310. 2.  
so adjudged against the Opinion in 28 H. 8. Br. Attornment 3 Leon. 17. pl. 40.  
4 Leon. 23. pl. 73.  
1 Jones 366, 377.

And note Reader, a Difference between an Attornment, which is an Agreement, for that may be made in the Absence of the Grantee, but in Case of a Disagreement, that ought to be made to the Party himself, as appears in *Wheeler's Case*, 14 H. 8. 23. a. b. And the Reason and Cause of the Difference is, because in Case of Disagreement, the Party might perswade and move the other by Reason, by Entreaty, or other Means to give his Consent or Good-will; and therefore the Law requires that the Disagreement be made to the Party for the Prejudice which otherwise might happen to him; but in the Case of Consent, (and namely in Case of Attornment, which is to vest and perfect the Estate of the Grantee, and so for his Benefit) there it being made in his Absence, is as well as if it were made in his Presence.

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Hill.



## Hill. 43 Eliz. Reg.

*In the Common Pleas.**The Lord CROMWEL's Case.*

Jenk. Cent. 352.  
 Moor 105, 471.  
 3 Anderl. 17, 230.  
 2 Anderl. 69.  
 Cr. El. 891. Yelv.  
 3. Noy 44. N.  
 Henl. 201. pl. 239.  
 Dyce 311. pl. 83.  
 2 Bulst. 251, 255.

**I**N an Affise brought by *Edward Lord Cromwel* against *Edward Andrewes* of *Gray's Inn*, Esq; and others, of Lands and Tenements in *Alaxton* in the County of *Leicester* upon *nul tort nul disseisin* pleaded, the Recognitors of the Affise gave a special Verdict to this Effect: *John Blunt* Esq; seised of the Manor of *Alaxton* in the County of *Leicester*, whereof the Lands and Tenements put in View as a Parcel, to which Manor the Advowson of the Church of *Alaxton* was appendant, by Deed indented 10 Aprilis, 1622 Phil. & Mar. between him and *Anthony Andrewes*, (Father of the said *Edw.*) did grant, bargain, and sell the said Manor, with the Appurtenances, by the Name of the Manor of *Alaxton*, and of the Advowson of *Alaxton*, appendant to the said Manor, to *Anthony Andrewes*, To have and hold to him and his Heirs, to the Use of him and his Heirs in the same Manner and Form as afterwards in the said Indenture is mentioned. And *Blunt*, by the said Indenture covenanted, that the Manor was of the Value of 42 l. per Ann. and that he was thereof Owner of an Estate of Inheritance, and that it should be discharged of Incumbrances, except Leases, upon which the ancient Rent was reserved. And further, *Blunt* covenanted that he would permit *William Rud* and *Richard Elson* to recover by common Recovery the said Manor, with the Appurtenances, against his Heirs, which Recovery should be to the Uses and Intents following, scil. To the Use of *Anthony Andrewes* and his Heirs, rendring for the said Manor, with the Appurtenances, 42 l. per Annum, to have and receive to *Blunt*

and his Heirs, at two Feasts, &c. according to the Covenants in the Indenture, and 10 l. *Nomine pena*, and Distress for both. And further it was covenanted and agreed by the same Indenture between the said Parties, and each covenanted and granted, with the other, in Manner and Form following, that is to say, as well for the Assurance of the said Manor, with the Appurtenances, to *Anthony Andrewes* and his Heirs, as of the said Rent to *Blunt* and his Heirs: That *Blunt* before *Easter* then next following should levy a Fine of the said Manor, with the Appurtenances, to *Anthony Andrewes* and his Heirs; and that by the same Fine *Anthony Andrewes* should render a Rent of 42 l. in Fee, payable at two Feasts, with *Nomine pena* and Distress. Provided always that the said *Anthony Andrewes* shall by his Deed sufficient in the Law, give the Advowson and Parsonage of the said Church to the said *John Blunt*, during his Life, and if it happen not void in his Life, then one Year to his Executors. And further it was covenanted and agreed by the same Indenture, between the said Parties, and the said *Anthony Andrewes* covenanted with the said *Blunt* to give *Blunt* 840 l. for the said Rent and Patronage, to be paid within a Year after Notice that he would sell it; the Notice to be 7 Years after the said Sale. And further it was covenanted, granted, and agreed, between the said Parties, by the same Indenture, That all Manner of Estates, Assurances and Conveyances after to be made and conveyed of the said Manor and other the Premises, should be to the Uses and Intents comprized in that Indenture, and to no other Use or Intent; and that is the Order, Course, and Effect of all the Cov'ts and Clauses of the said Indent.

And afterward *Ter. Pasch.* next following, a Recovery was had by *Rud* and *Elson* against *Blunt* of the said Manor, with the Appurtenances, according to the said Indenture. By Force of which, *Anthony Andrewes* was seised of the said Manor, with the Appurtenances, (*prout lex postulat.*) And afterwards *Octab. Mich. 2 & 3 Phil. & Mar.* *Blunt* and *Anthony Andrewes* levied a Fine to *Richard Perkins* and his Heirs, of the said Manor, with the Appurtenances, and he granted and rendred a Rent of 42 l. *per Ann.* out of the said Manor to *Blunt* in Tail, with the Rem'der to the *E. Montjoy*, in Fee, with Clause of Distress and *nomine pena*, to be pd as the said Rent was limited to be paid, and granted and rendred the said Manor, with the Advowson, to *Anth. Andrewes*, in Fee. And Proclamations were made according to the Statute. And whether it was found by the Recognitors of the Assise, that this Rent was not levied for a new Sum of Money, or upon any new Assise, but was levied to the Uses in the Indenture mentioned. *Anthony Andrewes*, in his Life, did not grant the Advowson according to the Indent. and afterwards *Anth. Andrewes* dyed;



ed; and after his Death, and in the Life of *Blunt*, the Church became void; *Edw. Andrewes*, Son and Heir of *Anth. Andrewes*, entred into the said Manor; *Blunt* did not request *Anth. Andrewes*, in his Life, to grant him the said Advowson according to the said Proviso, *Blunt* entred into the said Manor for the Condition broken. And 6 Dec. 16 Eliz. in Confid. of 848 l. by Deed indented and inrolled in the Com. Pleas, granted, bargained, and sold the said Manor, with the Advowson, to *Henry L. Cromwel*, in Fee, by Force whereof he entred, upon whom the said *Edw. Andrewes* entred and afterwards *Henry L. Cromwel* dyed, and the said *Edw. L. Cromwel* his Son and Heir entred upon the said *Edw. Andrewes*, who, with the other Defendants by his Commandment, entred upon him, and put him out of Possession. And whether this Entry was a Disseisin to the Plaintiff, or not, was the Question.

And this Case was oftentimes argued in the Com. Pleas by *Telverton*, *Glanvill*, and *Williams*, Serjeants on the Plaintiff's Part, and by *Drew* the Queen's Serj. and others, on the Defendant's Part. And afterwards it was argued Mich. 30 & 40 Eliz. by the Lord *Anderson*, *Walmsley*, *Beaumont*, and *Owen*, Justices, at two several Days, in the Com. Pleas, and the Court was divided in Opinion. And thereupon the Case was argued before all the Judges of England in the Excheq. Chamber by *Williams*, Serj. and *Coke*, Attorn. Gen. for the Plaintiff, and by *Flemming*, Solicit. Gen. and *Francis Bacon*, for the Defend. And afterwards the Case was openly argued in the Excheq. Chamber by all the Justices of the one Bench and of the other, and by the Barons of the Exchequer. And it was there resolved, that Judgment should be given for the Plaintiff. And Mich. 42 & 43 Eliz. Judgment was given by the Justices of the Com. Pleas according to the said Resolution. And for avoiding Prolixity, I will omit all the Arguments at the Bar, and report only those Matters in Law that were resolved by the Justices in this Case, and the Reasons and Causes of their Judgment. Four Matters were resolved in this Case:

First, That the said Proviso makes a Condition; for the Law hath not appointed any (a) Place in a Deed proper or peculiar to a Condition, but its Place is where the Parties please. And it appears by *Littleton*, that (b) Proviso is apt a Word to make an Estate conditional, as *sub Condition* or any other Word of Condition; But notwithstanding that, when this Word (Proviso) shall make an Estate or Interest conditional, three Things are to be observed: 1. That the Proviso do not depend upon another Sentence, nor participate thereof, but stand originally of itself. 2. That the Proviso be the Word of the Bargainor, Feoffor, Donor, &c. 3. That it be Compulsory to enforce the Bargainee, Feoffee, Donee, &c. to do an Act; and because they all con-

(a) 2 Rol. Rep. 356. Godb. 418.  
1 Jones 169.  
(b) Lit. Sect. 329.  
Co. Lit. 201. b.  
Cr. Car. 129. Lit.  
fol. 75. a. 1 Rol.  
518.

(c) Palm. 496.



in this Case, it was resolved that it was a Condition in what Place soever it be placed: But that this Proviso should not make a Condition in the Case at Bar, divers Objections were made.

1. That the Indent. in which the Condit. is contained was not inrolled, so that no Estate passed by it; and then (as it was object.) the Condition cannot be annexed to an Estate which was afterwards convey'd by the Recov. for the Indent. was sealed and delivered in Feb. and the Recov. passed in East. Term, and the Condition could not precede the Estate, but a Condition ought to be in the same Conveyance, or comprized in another Deed delivered (a) at the same Time, (a) Plowd. 133. as the Books are agreed in 17 Ass. 2. & 43 Ass. for (b) *Qua* a. b. 137. a. b. incontinenti sunt, *inesse videntur*. 2. It was object. that *Andrewes* (b) Co. Lit. 372. had nothing by the Ind'res but Cov'ts of *Blunt's* Part, and therefore it would be equal to construe it, that *Blunt* should have like Remedy; *scil.* Cov'ts on *Andrewes* Part. 3. It was object. that the precedent Sentence, as it appears before, is to this Effect: And further it is cov'ted and agreed between the said Parties, and each of them cov'teth with the other in Manner and Form following: And then the Fine upon Grant and Render is appointed; and immediately after that, the Proviso is added; and next after the Proviso, this Clause followeth. And further it is cov'ted and agreed between the said Parties, containing a Cov't for Purchase of the Rent. And it was said, that (c) *ex antecedent' & consequent' sit op-* (c) Winch. 74. tions interpret'; but it appears by the precedent Clause, 3 Bulstr. 65, 168. that all that shall follow after it shall be but Cov'ts; for it 1 Rol. Rep. 375. is said, that each cov'ts, with the other, in Manner and Lit. Rep. 63. Form following; so that by the express Words and Intent Poph. 211. of the Parties, all that follows shall be but Cov'ts; but the Proviso follows, and therefore shall be but a Cov't. Then the subsequent Sentence explains it also; for there it is said, And further it is cov'ted and granted between the Parties, &c. *Ergo*, the next Clause before was but a Cov't, for so much this Word (further) implies. 4. It was object. that if the Proviso shall be a Condit. it shall refer to the Clause next precedent, *scil.* to the Fine to be levied according to the Purport of the Cov't next before, and not to the Rec'ry, which is more remote and distinct from it by the Interposition of the said Cov't concerning the Fine, *Et (d) ad prox-* (d) Raym. 505. imum *antecedens fiat relatio nisi impediatur sententia*, Lit. Rep. 187. Hardres 77.

As to the first Object. it was answered and resolved, That the Intent of the Parties was not that the Estate should pass by the Bargain and Sale, but that the Estate should be conveyed by the Recovery; and that the Indentures should direct the Uses and Intents as well of the Rec'ry, as of all other Conveyances after to be made: Then it is apt and natural that the

(a) Co. Lit. 37.  
Postea 72. b.  
3 Co. 102. b.

the Indentures which direct the Uses which cannot be raised till the Recovery be had and executed, should comprehend the Conditions and Limitations annexed to the Uses; and as well as the Indentures may direct the Uses of the Recovery subsequent, so may they declare the Conditions and Limitations annexed to the same Uses: And the Statute of 27 H. 8. (a) doth execute the Estate according to the Manner, Condition, and Quality of the Use, so that by Force of the said Act, the Estate itself is conditional, and that is approved by the general Allowance and Experience in all the Conveyances of the whole Realm.

As to the second Objection, it was answered and resolved That it was not unjust or unequal that the Bargainor should annex such Condition as pleased him to the Estate of the Land, for the Land moved from him, *Et cujus est dare, ejus est disponere*, and the Bargainee hath accepted it.

As to the third Objection, it was answered and resolved that neither the Precedent nor the subsequent Covenant takes away the Force of the Proviso; for altho' Words of Covenant had been contained in the same Clause of the Proviso itself, yet the Proviso being, in Judgment of Law, a Word of Condition, shall not lose its Force. And therefore it

(b) Cr. Eliz. 242.  
2 Rol. 410. Gold.  
216, 2 Anderf. 72.  
Moor 707. Co.  
Eir. 202. b. Cr.  
El. 385. 1 Anderf.  
267. Winch  
36. Lanc 109.

hath been adjudged, between (b) *Simpson* and *Titterel*, in the Common Pleas, where the Case was, That Serj. Benloe 13 Nov. 26 Eliz. demised to *Titterel* certain Lands in *Essex* for 40 Years: Provided always, and it is covenanted and agreed between the said Parties, that the Lessee, &c. should not alien, and it was adjudged, that it was a Condition by Force of the Proviso, and a Covenant also by Force of the other Words. Also it was adjudged in the King's Bench

(c) 2 Anderf. 20.  
Moor 706. Poph.  
216. Goldsb. 130.  
Cr. El. 384, 486,  
360. Hardres 49.  
Lanc 57. 109.

*Pasch. 39 Eliz. Rot. 351.* between *Henry* Earl of (c) *Pembroke* Plaintiff, and Sir *Henry Barkley*, Knight, and *Symons* Defendants; And the Case was, that the Earl of *Pembroke* granted the Office of Lieutenantship of the West Part of the Forrest of *Fronseltwood* in the County of *Somerset*, to Sir *Morice Barkley*, (Father of the said Sir *Henry*) in Tail Provided always, and the said Sir *Morice Barkley* for him &c. doth covenant and grant to and with the said Earl that neither he the said Sir *Morice*, nor any of the Heirs Male of his Body, shall cut down any Wood growing upon any Part of the Premises; And it was resolved by all the Judges of *England*, upon Argument before them at *Serjeant's Inn* that although the Proviso was coupled with the express Covenant of the Grantee, and every Condition ought to be created by the Words of the Grantor, Donor, Feoffor &c. yet, in the Judgment of Law, this Word (Proviso) was a Condition created by the Grantor, although all the rest of the Sentence was the Words of the Grantee



for Proviso being an apt Word of Condition, the same Sentence contains the Words of the Grantor purporting a Condition, and the Words of the Grantee comprehending a Covenant; which Judgment was afterwards reversed in the Exchequer Chamber for a Defect in the Declaration, but not for the Matter in Law, for that was resolved by all the Justices. And in the Case at Bar, the Special *Habendum* was observed, *scil.* To have and to hold to *Andrewes* and his Heirs, in the same Manner and Form as afterwards in the Indenture is mentioned; by which it appears, that the Intent of the Parties was, that the Estate of *Andrewes* should be *sub modo*, which it would not be, if the said Proviso makes not a Condition, or a conditional Limitation, as *Popham* Chief Justice called it. Note, In this Case 27 H. 8. 18. a. (a) *Dockwray's Case*, *Littleton, Chap. Conditions*, (b) 14 *Eliz. Dyer* (c) 311. 4 & 5 *Phil. & Mar. Dyer* (d) 152, that this Word (e) (Proviso) makes a Condition, but when a Proviso depends upon another Sentence, or hath Reference to another Part of the Deed, it never makes a Condition, but a Qualification or Limitation of the Sentence, or Part of the Deed to which it is referred. As in 5 *Eliz. Dyer* 221. b. *inter Ayer & Ome*, a notable Case. 7 H. 6. a. (f) Lease without Impeachment of Waste, Proviso that the Lessee shall not do voluntary Waste, *Litt. Chap. Rents. f. 48. a. b.* A Grant of a Rent-Charge, (g) Proviso that the Grantee shall not charge his Person. *Tramington's Case* in the King's Bench, *Pesch.* 16 *Eliz. Rot.* 273, there a Proviso tending to qualify and explain a Sentence Precedent, doth not make a Condition 3 & 4 *Phil. & Mar. Dyer* 150, (h) *Parker's Case*. Proviso amounts to a Covenant, 28 H. 8. *Dyer* (i) 13. b. Note, Reader, The Case in 35 H. 8. *Br. Condit.* 195, commonly cited to prove that a Proviso doth not make a Condition when it comes *inter alias conventiones*, doth not warrant it, but if it be well observed, the Opinion there is good Law, and stands well with this Judgment. For there is said, *Nota pro lege*, that a Proviso put (*hoc est*, to be performed or not done) upon the Part of the Lessee, upon the Words of the *Habendum*, makes a Condition, yet contrary of a Proviso (to be performed or not done) on the Part of the Lessor: As if it be covenanted in the Indenture, that the Lessee shall make the Reparations, Proviso, that the Lessor shall find great Timber, it is not a Condition; *nec per aliquos* is it a Condition when it comes *inter alias conventiones*, upon the Part of the Lessee, altho' it be covenanted after the *Habendum*, and after the *Reddendum*, that the Lessee shall scour the Ditches, or the like, Proviso, that the Lessee shall carry the Dung to such a Field, it is not a Condition to forfeit the Lease, (and it is true, for it depends upon the precedent Covenant, and without the precedent Covenant could not stand) contrary if such

(a) Cr. Eliz. 242.  
4 Leon. 71.  
(b) Lit. Sect. 329.  
Co. Lit. 203. b.  
(c) Dyer 311.  
pl. 83.  
(d) Dyer 152.  
pl. 7. 4 Co. 120.  
b. Cr. El. 757.  
816.  
(e) Cr. El. 73.  
242. Co. Lit.  
203. b. Moor 51.  
52. 106. 2 Leon.  
128, 225. 4 Leon.  
70, 71, 72, 73.  
10 Co. 42. a.  
(f) 2 Anderl. 71.  
4 Leon. 71, 72, 73.  
2 Leon. 128, 129.  
3 Leon. 225. 9 H.  
6. 35. a. Plowd.  
135. b. Dyer 47.  
pl. 11. Bridgm.  
102.  
(g) 2 Leon 128.  
3 Leon. 235. Lit.  
Sect. 220. 4 Leon.  
71. Co. Lit. 146.  
(h) Dyer 150. pl.  
83. 1 Co. 155. 2.  
Moor 247. 480.  
1 Rol. 518, 848.  
1 Anderl. 19.  
Hob. 35. Yelv.  
9. 3 Leon. 22.  
154. 4 Leon. 193.  
Noy 14. Cr. El.  
841. 1 Rol. Rep.  
359. 3 Bull. 163.  
(i) Dyer 13. pl.  
65. Co. Lit. 203.  
b. 10 Co. 42. a.



Proviso be put immediately after the *Habendum* which makes the Estate, or after the *Reddendum*, (and true it is also, for then in Regard it stands upon itself, and doth not depend upon a precedent Clause, it makes a Condition) and all this is good Law, and stands well with the Resolution of the said Justices, and so the *Quare* which *Brook* made there is now resolved, and made without Question.

(a) Co. Lit. 187.  
b. Vaughan 52.  
Antea 71. b.

As to the 4th Object. it was answered and resolved, That the Proviso being a Condition ought to do the proper Office of a Condition, and that is to make the Estate conditional, and therefore in what Place soever it be put, it having the Force of a Condition, shall have Refer. to the Estate, and shall be annexed to it; And it was said, *Quod Proviso est providere presentia & futura, & non praterita.* The 2d Point which was resolved by the Justices was, that after the Rec'y

suffered, the Stat. of (a) 27 H. 8. did execute the Estate of the said Manor to *Andrewes*, according to the Limitation of the Use directed by the said Indentures subject to the said Condition or Proviso: And also by Force of another Clause of the said Act, created a Rent of 42 l. per An. in *Blunt* and his Heirs, for it is provided by a special Branch of the said Act of 27 H. 8. as followeth: That where divers Persons stand and be seised of and in Lands, &c. in Fee Simple, or otherwise, to the Use and Intent that some other Person and Persons shall have and perceive yearly to his or their Heirs, one annual Rent out of the same Lands, &c. in every such Case such Person, &c. be adjudged in Possession and Seisin of the same Rent, &c. as if a sufficient Grant, &c. had been made, &c. by such as were or shall be seised to such Use or Intent, &c. 20 Eliz. *Dyer* 362. b. acc. And altho' in the Case at Bar the Use of the Recovery was first limited by the Ind're to *Andrewes* and his Heirs, and then came the Clause, Yielding for the said Manor 42 l. per An. to *Blunt* and his Heirs, and altho' it was objected that the Rent ought to be limited out of the Estate of the Rec'ors, and not out of the Possession which *Andrewes* had executed to him by the Stat. according to the Use limited to him by the Ind're, yet it was

(b) 1 Jones 179.  
Dyer 362. pl. 21.  
1 Co. 47. b. 137. a.  
N. Benl. 215. pl. 299. 1 Anderl.  
51, 52, 338.  
(c) 5 Co. 8. a.

agreed that *Blunt* should have the said (b) Rent by Force of the said Clause of the Act of 27 H. 8. for the Intent of the Parties appears, that *Blunt* should have the Rent, and the Law will make such (c) Construction, notwithstanding the *Reddendum* comes after the Limitation of the Use, that he shall pay it who by Law ought to pay it, ut (d) *res magis valeat quam pereat.*

(d) 1 Co. 76. a.  
8 Co. 95. b.  
3 Keb. 288.  
2 Jones 69. 5 Co. 55. b. 1 Mod. Rep. 109.

Thirdly, It was resolved, that the Fine levied to *Perkin* by *Blunt* and *Andrewes*, hath not extinguished the said Condition, and that was the great Question and Doubt of the Case; and altho' it is true as the Philosopher saith, *Quod falsus error nuda veritate in multis est probabilior, & sapientum*

*rationibus*

*rationibus vincit veritatem error*, and altho' as much was objected against the Condition as the Art and Wit of any Man could invent or imagine, yet it was resolved that the Condition remained for many notable Reasons; and all the Objections were well and fully answered and satisfied. First, Because by the general Covenant it is declared, that all Manner of Estates, Assurances, and Conveyances after to be made of the said Manor should be to the Uses and Intents comprised in the same Indent. and to no other Use or Intent; within which Covenant the Fine levied to *Perkins* is included, for that is one Manner of Estate, Conveyance and Assurance, and therefore ought to be to the Use and Intent of the Indenture; and the Use and Intent of the Indenture was, that the Condition should remain, and that the Estate of *Anth. Andrewes* should be subject to the same Proviso; and therefore the first general Reason of their Resolution was, that by the Com. Law the fine was so directed by the general Covenant to have such special Operation according to the Intent of the Parties in this Case, of a common Assurance, that the Condition should not be touched thereby; but that the Fine should extinguish all other Rights and Titles to the Manor, saving the said Condition only, which should not be extinguished thereby; and that is proved by the (a) like Cases at the Com. Law. And therefore in 9 E. 3. 1. b. & (b) 12 E. 4. 3. the Lord, by Deed, may release all his Right in the Land, saving to him his Rent. So 2 E. 2. (c) *Voucher* 108, one may enter into the Warranty, saving to him his Rent; And 50 E. 3. 12. b. a Man may enter into Warranty, saving to him his Condition. And *Putnam's Case*, 4 & 5 *Phil. & Mar. Dyer* 157, was cited; where (d) *Putnam*, by Deed intended, did enfeof *Duncombe* and his Heirs of the Manor of *Duncombe*, rendring to *Putnam* and his Heirs a Rent with a Clause of Distress, and for Non-payment a Re-entry, and by another Indenture of the same Date, *Putnam* covenanted with *Duncombe* to levy a Fine of the said Manor before such a Feast, &c. which Fine should be to the Uses, Intents, Purposes and Conditions expressed in the former Indenture, and to no other, and afterwards the Fine was levied accordingly by *Putnam* to *Duncombe come cco*, &c. with usual Words of Release of all his Right. And it was resolved, that neither the Condition nor the Rent were touched by the Fine levied of the Land by reason of the former Indenture which ruled the Fine: And there it is said, that it is like a Release made by the Lord to the Tenant of the Land *Salvo sibi dominio*: and all this appears in the Reports of the Lord *Dyer*: The like Judgment was given *Trin. 23 Eliz.* as the Lord *Dyer* there reports *per opinionem omnium Justiciar' de banco*, upon Evidence to a Jury in *Essex*, between *Tusser* Plaintiff and others Defendants, notwithstanding a general Entry into the Warranty

(a) Moor 298.  
(b) 12 E. 4. 11. 2.  
Fitz. Release 16.  
Perk. Sect. 847.  
Br. Release 55.  
(c) 2 E. 2. Vouch.  
208.  
(d) Moor 106, 107  
384. 472. 2 An-  
derf. 85, 87.  
Dyer 157. pl. 28;  
29. 2 Rol. Rep.  
246. 3 Keb. 38;  
537. Palm. 250;  
506. Winch. 111.  
Postea 73. b. 74. 2.  
78. a. b. 1 An-  
derf. 18.

(e) Dyer 157.  
pl. 30.



ranty by Bradborne and his Wife upon a Voucher in a Writ of Entry in the Post, and the Issue was *utrum recuperatio pred' fuit ad opus & usum dict' the Rec'or tantum, &c.* but *ad usum etiam*, that a Rent reserved by the Husband and Wife by Fine before the Rec'y by them to Tuffer levied, should be assured to Bradborne and his Wife in Fee, and not to be extinguished; upon which *propter opinionem Curia Tuffer* was nonsuit. So there it appears by the Opinion of the Court, that the Assent and Agreement of the Parties did preserve the Rent, notwithstanding the general Entry into the War'ty; and by the special Agreement of the Parties, the Rec'y is so directed, that the Rent is not touched by the general Entry into the Warranty. And it was adjudged in the K's

(a) Cr. Eliz. 300  
Postea 78. a.

(b) Dyer 311.  
Pl. 83, 84.  
2 Brownl. 52.  
1 Anderl. 17.  
Co. Ent. 499.  
Nu. 15. Moor  
105. Yelv. 124.  
Postea 75. b.

(c) 12 Co. 71.  
Co. Lit. 19. a.  
166. a. 180. a.  
2 Roll. Rep. 332.  
2 Sandl. 187.  
Godb. 254.  
1 Rol. Rep. 262.  
Winch. 48. 96.  
Hob. 40. Lit.  
Rep. 208.

Bench Trin. 34 Eliz. between (a) *Clever* and *Childe*, Rot. 805, according to the Resol. in *Putnam's Case*; and so and for the same Reason was it adjudged in this very Case now in Quest. Pasch. 14 Eliz. (b) *Dyer* 311, in a *Quare impedit* for the Advowson of *Alaxton*, that the Condition was not extinguished by the said Fine; so that as it is commonly said, (c) *Modus & conventio vincunt legem*, and the Covenant and Agreement of the Parties hath Power to raise an Use, as in *Rainton's Case* Plow. Comm. 2. To declare Uses upon a Fine or Recovery, as common Experience hath allowed: 3. To preserve Rents and Condit's, and to direct Fines or Rec'ries, &c. to enure to certain Purposes, as in *Putnam's Case* and other Cases before cited.

Against which it was object. 1. That the Condition or Rent cannot be saved by the Indenture, for no saving can be in a collateral Deed or Record, but it ought to be saved in the same Deed or Record, as in the Cases put before, where the Lord releases to the Tenant, it ought to be saved by a Saving in the same Deed, and not by any Covenant or Saving in any collateral Deed: And so the Books are in 50 E. 3. 12. 2 & 4 E. 2. *Voucher*, that a Man may enter into the War'ty, saving to himself his Rent or Action, but it ought to be in the same Record, for it cannot be saved in any collateral Record or Deed. And therefore if a Man by Deed covenants that he will make a Feoffment, and that the Feoffment shall be upon Condition, that if the Feoffee do not pay a certain Sum before such a Feast that he shall re-enter; and afterwards he makes a Feoffment without comprehending any Condition in it, the Feoffment shall be absolute, and shall not be subject to the Condition comprised in the first Deed.

As to that it was answered and resolved, 1. That the general Covenant shall rule and direct the Fine to have its Operation to extinguish his Right and Title whatsoever, saving the said Condition, although the saving be not within the same Record, and that for divers Reasons:

1. The Objection which hath been made, might have been made against the Resolution of the Justices in the Time

of a



of Queen Mary, in Putnam's Case, and of the Court of Common Pleas in this Queen's Time, in Bradbury's Case, Clever's Postea 78. a. Case, and in this very Case; for in all these Cases it was agreed, That neither the Condition nor the Rent were extinguished or touched, but continued, notwithstanding the Fine *sur confans de droit come ceo, &c.* and the general Entry into the Warranty; but it appears also in our Books, That it is not of Necessity that the Saving should be always in the same Record or Deed, but in some Cases it may be contained in (a) another Deed, although by Law it might have been saved in the same Deed or Record. As in (b) 17 Aff. 2. & (c) 43. Aff. 12. if the Disseisee release his Right to the Disseisor, it may be defeated by a Condition contained in another Deed delivered at the same Time. So the same Law of a Saving. And F. N. B. 205. (d) if a Woman makes a Feoffment in Fee by Deed, rendring Rent, and hath another Deed to shew, that the Intent of the Feoffment was, That the Feoffee should marry her, the same is good, and that by Reason of the collateral Deed, and she may have a Writ of Entry *causa matrimonii prolucuti*, or she may enter if she will, and that is in the Case of a particular Assurance; but in the general Case of common Assurances, that is to say, in the Case of a common Recovery, he who enters into the Warranty may save his Rent, and yet if he enters into the Warranty generally, it may be saved by Covenant and Agreement, in an Indenture made before the Recovery, as it was agreed, as appears before in Bradbury's Case, and that in Favour of common Recoveries, which are the (d) common Assurances of the Land, the usual Form of which shall not be altered by a special Manner of Entry, saving his Rent or Condition, but may be saved by an Indenture *dehors*: And Conveyances, which are used for common Assurances of Land, shall be expounded and construed according to common Allowance, without prying into them with Eagles Eyes. And therefore Pasch. 35 Eliz. in Dormer's Case, it was adjudged in the King's-Bench, That a common Recovery might be had of an (e) Advowson. So it was adjudged in the Exchequer in Sir William Pelham's Case, That if a common Recovery be suffered by Tenant for Life, it is a (f) Forfeiture of his Estate. And the Reason of both the said Judgments was, Because a common Recovery is by Usage a common Conveyance, as a Fine or Feoffment, &c. And it is said in Plow. Comm. in Trevilian's Case, 514. That in common Recoveries, the common Usage and Intent of the Parties is to be respected; for a common Recovery had against (g) Husband and Wife, shall bar the Wife of her Dower, and yet the Wife shall not have any Recompence in Value, and therefore in Strictness of Reason it is hard to be maintained, but common Usage, and the (h) Intent of the Parties, makes it a Bar. And therefore it is wisely said of a Lawyer, *Non est recedendum a communi observantia, &*

(a) Co. Lit. 146. b.  
(b) Br. Condition 103. Antea 71. a. Br. Deceasans 6. Br. Release 34.  
(c) Br. Release 39. 1 Rol. 414. Br. Deceasans 11. Br. Condition 115, 120.  
(d) F. N. B. 205. k. Postea 75. a. b. Dyer 312. pl. 84. 8 E. 2. Entry 78. 2 Anderf. 82. Palm. 507. Dyer 146, 147. pl. 71.

(d) 2 Rol. Rev. 216. 5 Co. 40. b.

(e) 5 Co. 40. Jenk. Cent. 257. Poph. 22, 23. 2 Rol. Rep. 67. Cr. Car. 270. 1 Mod. Rep. 250.  
(f) Poph. 23. Co. Lit. 356. a. 362. a. 1 Co. 15. b. 3 Co. 4. b. 10 Co. 44. a. 2 Leon. 60, 67. 4 Leon. 123. 133. 1 Anderf. 227. Postea 77. b. Moor 271. Vaughan 51. 2 Brownlow 170. 1 Rol. Rep. 304. 5 Co. 40. b.  
(g) Postea 77. b. 78. a. 10 Co. 43. a. 1 Rol. 347. 2 Rol. 395. Palm. 226.  
(h) Co. Lit. 314. b. Postea 76. a

*minime mutanda sunt quæ certam interpretationem habuerunt.*  
 But the Case of the Fine in our Case, is stronger than the Case of the Recovery; for in the Case of a Recovery, the Vouchee may enter specially, saving his Action, Rent, Condition, &c. and yet because the Usage before this Time hath allowed it, it may be saved by Covenant and Agreement precedent, as it hath been said; but in the Case of a Fine, no Saving can be contained in it, and therefore for Necessity (and according to common Usage always allowed) it may be saved by the Direction and Rule of a precedent Covenant and Grant. And therefore it is adjudged in (a)

(a) 6 R. 2. E-  
 stoppel 211.  
 Dyer 157. pl.  
 25. 10 Co. 96. a.  
 1 Baiter. 164.  
 1 r. Eliz. 917.  
 2 Rol. Rep.  
 473. Postea 77.  
 b. 78. a.

6 R. 2. *Esoppel* 2. That if a Man and his Wife enfeoff two by Deed, to have and to hold to them and their Heirs, and afterwards the Feoffor and his Wife levy a Fine *sur conusans de droit* to them, and the Heirs of one of them, that this is no Conclusion, but that both shall have the Fee-simple as they had before: And there *Skipwith*, Chief Justice of the Common Pleas, *ex assensu Belknap, & sociorum suorum*, gave four Reasons of their Judgment. 1. Because they had Fee before by the Feoffment, and therefore the Fine should enure but as a Release. 2. The Conusans to them, and the Heirs of one of them, *come ceo, &c.* might well stand with the Estate which they had before; for whereas the Fine acknowledgeth the Right of one (*Hoc est*, the Fee to one) it is true, for the Tenements were the Right of the one and other, *Ergo*, the Right of one. 3. We cannot take other Fines, for the Fee-simple ought to be determined in (b) one Person certain by the Fine. 4. The Fine is not executory but to extinguish the Right of the Wife only, wherefore it is no *Esoppel*. *Nota ex hoc*, That the precedent Feoffment doth rule and direct this subsequent Fine, and preserves the joint Estate in them of the Fee-simple, against the express Limitat. of the Fine: Also forasmuch as the Fine by Law cannot be levied in other Form, it shall be ruled and directed according to the precedent Agreement, and Estate made by the Parties, *pari ratione*, forasmuch as a Saving can't by Law be in the Fine, it may be directed and ruled by the precedent Agreement and Covenant of the Parties. So if two Parsons of two several Churches, by one Instrument in Writing, change their Benefices, by Way of Exchange, and to that Purpose resign them into the Hands of the Ord. and the Patrons present accordingly, and one of the Parsons is admitted, instituted and inducted, and the other is admitted and instituted, and dies before Induction, altho' the Induction of the other was absolute, yet it was directed by the precedent Agreement which was by way of Exchange, which ought to be executed on both Parts in the Life of the Parties; and the Institution and Induction cannot be upon express Condition, nor in other Form than was done, *vide* 45 E. 3. *Exchange* 10.

(b) 5 Co. 38. b.  
 1 Leon. 62.

3 H. 4. 5. Fitz.  
 Exchange 10.

Secondly, It was answered, That in this Case the Bargain

Deed,



and Sale, the Recovery and the Fine, although they be made, suffered, and levied at several Times, yet all of them by the mutual Agreement of the Parties, make but one and the same Assurance of one and the same Mannor, according to one and the same original Bargain and Contract, and therefore each of them doth tend to perfect the said Bargain, none of them to destroy any Part of it, or to overthrow the true Intent and Meaning of the Parties in any Thing, but shall be taken as one and the same Assurance, made at one and the same Time. As if a Man makes a Lease by Indenture for Life, of Lands in several Counties, and makes Livery of the Land in one County, and then several Days after makes Livery in the other County, yet one entire Rent shall Issue out of the Lands in both Counties, and yet the Livery by which the Estate passed, was made at several Times, and therefore it might be argued, that presently by the first Livery, the Rent should issue out of that; but the Law will not adjudge by Parcels in Subversion of the Intent and Agreement of the Parties, but when all Acts are done in Performance of the original Contract and Agreement of the Parties, the Law will judge upon the whole as executed at one and the same Time: So if a Man makes a Deed of Feoffment with Warranty, and delivers the Deed to the Feoffee, and afterwards at another Time makes Livery *secundum formam chartæ*, now the Warranty is good; and yet it may be objected, That when the Deed was delivered, no Estate passed to which the Warranty could be annex'd; nor no Estate was in the Feoffee upon which the Deed might enure as a Release with Warranty, but the Deed which comprehended the Warranty took Effect presently by the Delivery of the Deed before the Livery of Seisin; and so by a nice Construction upon Distinction of Time, the Warranty would be overthrow'n; but the Warranty is good for the Cause aforesaid. And in these com. Assurances *praxis juris peritorum* is to be observ'd, and the Sentence of *Theophrastus* in *Met.* is true, (b) *Qui rationem in omnibus quarunt, rationem subvertunt*; and forasmuch as the End of the Law is to Settle Repose, and make Peace betw. Man and Man, concerning their Possess. &c. it wou'd be too dangerous a Thing to make any Construction against the general Allowance in common Assurances, for thereupon would rise infinite Contentions, Quarrels and Suits, which would be inconvenient. The 2d Object. which was made against it was, That this Fine was upon a Grant and a Render, and therefore without Writing could not be averred to be to an Use, for it imports a Consider. in it self, and therefore by naked Averment by Word, cannot be averr'd to be to any other Use or Intent than is comprized in the Fine it self, but by Deed it may be: Also the finding of the Jury is not material, for their finding ought to be submitted to the Judgm. of the Law as in *Amy Townshend's Case. Plo. Com.* it is agreed. So holds *F. N. B. 205. k.* (c) If a Wom. makes a Feoffment in Fee, by Deed, rendring Rent, she cannot by Word averr, That it was *causa matrimonii prælocuti*, for it appears by the Deed, That the Reservation was the Cause of the Feoffment,

Co. 79. b.

(b) Raym. 356.

(c) F. N. B. 205. k. Antea 74. 2. Dyer 140. 14. pl. 71. 312. pl. 84. 8 E. 2. Entry 78. 2 A. 1. derlin 02. valuer



(a) Br. Affise  
140. Br. Con-  
dition 100.

(b) Dyer 169.  
pl. 21, 22.

1 Anderf. 313.

2 Anderf. 81.

136. 199, 200,

201. 1 Rol.

Rep. 42.

(c) Antea 73. b.

Dyer 311. pl. 83,

84. 2 Brownl.

52. Moor 105.

1 Anderf. 17.

313. Co. Entr.

499. nu. 15.

Yelv. 124.

but if she hath a Deed to shew, and prove that the Deed was to the Intent that he should marry her, then she may well maintain a Writ *causa matrimonii pralocuti*, but without a Deed she cannot, as it is adjudg'd in 8 E. 2. *Entrie*. 78. see (a) 8 *Aff*. 34. and thereupon the Case of (b) *Wilks*, 1 *Eliz*. *Dyer*, and many other Cases were cited to this Purpose; but they did rely upon the Opin. of the whole Court of Com. Pleas, 14 E. *Dyer* (c) 311. in this very Case, That without writing a Fine upon a Grant and Render cannot be averr'd to be to any other Use or Intent than the Fine it self doth import: And then they objected in this Case, That forasmuch as the Indentures which should direct this Fine, were levied by *Blunt* and *Andrewes* to *Perkins*, who rendred a Rent to *Blunt*, and the Mannor to *Andrewes*, the said Indentures could not declare any Use or Intent of the Land from *Perkins*, who is a Stranger to the Indentures, and of a Fine levied to him, by which he rendreth a Rent to one, and the Land to the other, as is afore-said, which cannot be directed by any naked Averment, for the exprefs Consideration and Intent expressed in the Fine, and no Deed to which *Perkins* was not Party, can direct it, because now, by the mutual Agreement of *Blunt*, who had the Condition and the Rent, and of *Andrewes* who had the Land, this Fine is levied to *Perkins*, by which they make him absolute Owner of the Land, and that he should render a Rent to *Blunt*, and the Mannor to *Andrewes*, so that now *Blunt* hath the Rent of the Grant of *Perkins*, and *Andrewes* hath the Mannor by the Grant and render of *Perkins* also, Ergo, the Estate of *Perkins* cannot be subject to any Use or Intent comprized in the Indentures made before between *Blunt* and *Andrewes*, but ought to have a Deed to which *Perkins* shall be Party, and this Objection was enforced by many Reasons.

1. It was said, That notwithstanding the general Covenant, if *Blunt* and *Andrewes* had made a Feoffment, or levied a Fine upon any new Agreement or Consideration, altho' such new Agreement was only by Word, that the general Covenant should not rule any Conveyance or Assurance made upon a new Consideration and Agreement, and therefore if *Blunt* and *Andrewes* had enfeoffed *Perkins*, or levied a Fine to him for any Sum of Money, or other Consideration, this Feoffment or Fine should not be ruled or directed by the general Covenant, neither should the general Covenant direct or rule any Conveyance, but those which are made upon the first Consideration, and in Performance of the first Bargain, and not for any new Consideration, *quod fuit concessum*; then a *concessis*, they objected, That this Fine levied, imports in it self a new Agreement and Considerat. and that for divers Causes. 1. This Fine, as it hath been said, imports an exprefs Consider. in it self, *scil.* in Consider. of the Fine levied by *B.* and *A.* to *Perkins*, he grants and renders a Rent to *B.* and the Mannor to *A.* and no Averment by Word shall be receiv'd to shew that this Fine was levied

levied to another Use or Intent than is contained in the Fine, so that the Manner of the Fine imports a new Agreement. 2. It is levied by both to a Stranger to the Indenture, whose Estate cannot be subject to the Declarations or Covenants made between *Blunt* and *And.* and this new Person makes a new Agreement. 3. The first Bargain and original Contract between the Parties, is altered in Substance and Effect; for by the first Bargain *Blunt* was to have a Rent of 42 *l.* to him and his Heirs, and by this Fine the Rent is rendred by *Perkins* to him in Tail, the Remainder over to a Stranger, so that this Estate Tail, which is new, and limited in Remainder to a new Person in Fee, doth manifest that there was a new Agreement between the Parties, and then *ex consequenti* the said Indentures cannot rule or guide the Intent or Use of this Fine, the Averment by Word cannot be by Law, and the finding of the Jury is not material, for here is a new Agreement of Record, and none will affirm, that there shall be two Rents to *Blunt*, one in Fee, and the other in Tail, for that would be against the Intent of the Parties, and against all Law and Reason. As to this, it was answered and resolved, That it is true that a Fine upon a Grant and Render, unless it be in special Cases, cannot be (a) averr'd by Word to be to another Use or Intent than it expressed in the Fine, Feoffment, or other Conveyance: But there is a Difference between an Use and a Consideration, for when a Fine, Feoffment, or other Conveyance imports an expresse Consideration, a Man may averr by Word, another Consideration, which stands with the Consideration expresse; but the Parties cannot by Parol aver any other Use than is contain'd in the same Conveyance; also no Averment shall be against the Consideration expresse. But yet in some Cases a Fine upon a Grant and Render may be ruled and directed in Part by an Averment by Word. And that is when the original Bargain and Contract between the Parties is by Indenture or other Deed, as where it is agreed by Indenture, That a Fine shall be levied of certain Land, by the Name of certain Number of Acres to divers Persons, and that they shall grant and render the Land again in Fee-simple, which shall be to certain Uses; the Fine is levied of the Land, but some Variance is in the Number of the Acres comprized in the Fine, or the Fine is levied to one of the Parties only, who grants and renders the Land, so as there is Variance betwixt the Covenant and the Fine in Number and Person; and yet God forbid but that this Fine shall be averr'd to be to the Use of the Indentures, for the original Bargain and Agreement of the Parties was declared by Writing, and altho' some small Variance be in Quantity, Person, Time, or the like, betwixt the Fine and the Indenture, yet the Law (which in common Conveyances hath great Respect and Regard to the (b) Intent of the Parties, and to the Substance and Effect of their original Bargain and

(a) Cr. Jac. 29.

1 Co. 176. a.

5 Co. 26. a. b.

68. b. 7 Co. 39.

a. 9 Co. 10. a.

b. 11 Co.

25. a. 1 Rol.

Rep. 42. 2 Rol.

Rep. 362, 363.

Lane 119. 1 Anderson. 313.

1 Brownlow

191. Moor 192.

1 Vent. 368.

Dyer 147. a.

Pl. 72, 73.

(b) Co. Lit.

31. b. Postea



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Agreement) will suffer an Averment to agree the Fine and the Indenture, notwithstanding these Petit Circumstances of Number, Person, Time, and the like, when the Party avers that there was not any new Consideration, nor any new Agreement between the Parties, but that the Fine was levied according to the Indenture, and to the Uses and Intents contained therein: And it is agreeable to Justice and Equity, and especially in common Assurances of Lands between Party and Party, that some petit Variance or Circumstance shall not overthrow all the Substance and Agreement of the Parties in their Indentures, to the Disinheritance of one of them. And it was agreed in (a) *Taverner's Case*, now lately referred to the Justices out of the Chancery, That if *A.* hath 10 Acres in *D.* and *B.* hath 10 Acres in the same Town, and *A.* levies a Fine to *B.* of 20 Acres, and *B.* grants and renders 20 Acres to *A.* in Fee, yet *A.* shall not have the 10 Acres of *B.* unless there was a special Agreement between them to such Purpose, for otherwise the Conusee shall be said to render more than he received.

And as to that which is said, That *Perkins* is a Stranger to the Indenture, and that *Blunt* and *Andrewes* cannot limit the Use or Intent of the Land, which by the Fine was absolutely the Inheritance of *Perkins*, and that *Perkins* only hath the Power to limit the Use, and to make a Disposition of the Land and no other: To that it was answered and resolved, That the Scope and Purpose of the Indenture, and of the original Agreement of the Parties was, That *Andrewes* should have the Mannor, and *Blunt* a Rent out of it; now for Performance of it, it was advised, That both should join in a Fine to *Perkins*, and that he should render the Rent to *Blunt*, and the Mannor to *Andrewes*, so that it appears *Perkins* was but an Instrument to perform the original Agreement of the Parties, and had not any Power to limit any Use, or to make any other Disposition of the Land than *Blunt* and *Andrewes* had directed him; for if he had not agreed to make the Render in the same Fine as it was devised by *Blunt* and *Andrewes*, they would never have levied the Fine to him; so that he is but an Instrument to perform the Agreement of the Parties, and all shall be said to be done by the Order and Disposition of *Andrewes* and *Blunt*, according to their original Bargain and Agreement; as the Case in 2 *Eliz. Dyer* 172. *Lane* held of the Mannor of *Walgrave* by Knight's Service, which Mannor was held over of the King in *Capite*, *Lane* levied a Fine of the Tenancy to one, who granted and rendered it to *Lane* for Life, the Remainder to his Wife for Life, the Remainder to the right Heirs of the Husband. And it was resolved in the Court of Wards, That altho' the Wife was immediately in by the Render of the Conusee, yet because it appears that he was but an Instrument to render the Land as *Lane* should direct him, it

(a) 3 Bulstr.  
318. 1 Rol.  
Rep. 117.

(b) Dyer 172.  
pl. 12. 9 Co.  
127. 2.



was by the Judgment of the Law the Disposition of the Husband for the Advancement of the Wife. And it appears, That *Perkins*, in the Case at the Bar, was but an Instrument to perform the original Contract and Agreement of the Parties, because he had not any Power to overthrow the said Contract and Agreement of the Parties, which will be more apparent, if first the Parts of the Fine, and then the Seisin of *Perkins*, be examined and considered.

As to the first, If any Part of the Fine would destroy the Condition, it would be the Conusans of the Fine, for that is made by *Blunt* who hath the Condition, and by *Andrewes* who hath the Mannor: Suppose then, that *Perkins* had refused to make any Render, then it would be clear, that this Conusans to *Perkins* might be directed by the first Covenants in the said Indenture, although *Perkins* was a Stranger to it, and that is proved by the common Assurances. For if *A.* by Deed indented between him and *B.* bargains and sells Land to *B.* and his Heirs, and it is covenanted between them, That *A.* shall levy a Fine to *B.* and that *C.* who is a Stranger to the Deed, shall recover the said Land against *B.* in a common Recovery, which Recovery shall be to the Use of *B.* and his Heirs, this is good without Question, for it hath been agreed by them who have argued on the contrary Part, That the said Recoverers in the Case at Bar, although they were Strangers to the Indenture, yet their Estate was subject to the Uses of the Indenture: And it is usual, if Tenant in Tail, with Remainder, will bargain and sell the Land by Deed indented and enrolled to his Friend and his Heirs, who suffers a common Recovery with (a) double (a) Co. Lit. 372. b. Voucher, in which the Bargainor is vouched, and yet all that is to the Use of the Tenant in Tail and his Heirs, and so it is usual to be averred; for now upon the Matter, the Bargainee is but an (b) Instrument to be Tenant to the Pre- (b) Vaugh. 42. scribe in the Recovery, which shall be suffered to bar the Estate Tail and all the Remainders, and the Bargain and Sale was only to this Purpose; then if no Render had been made, this Conusans might have been ruled and directed by the Indenture: Then it is to be considered what (c) Seisin *Per-* (c) Vaugh. 41. kins had, and truly he had Seisin but for an Instant, and only to this Purpose, to make the Render, for his Wife shall not be (d) endowed, nor the Land subject to his (e) Recogni- (d) Cr. Jac. 615. Vaugh. 41. Co. Lit. 372. b. (e) Vaugh. 41. tances or Statutes; and the Render is to *Andrewes*, who was Party to the Indenture, so as the Render of *Per-* (f) Vaugh. 41. kins cannot extinguish the Condition which *Blunt* had, but the Conusans of *Blunt* shall extinguish it, if any thing shall extinguish it, and his Conusance is directed and ruled by the said Indenture, because *Blunt* at the time of the making thereof, was absolute Owner of the said Mannor, and had absolute Power to declare to

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to what Uses and Intents the said Recovery, and all other Assurances (without a new Agreement as hath been said) shall be. Also, although *Perkins* was a Stranger, yet the Render was to *Andrewes*, who was Party.

Further, it was said, That in this Case *Blunt* joined with *Andrewes* in the Fine for Necessity; for if he had not been Party to the Fine, the Render of the Rent could not be made to him, so that for this special Purpose to have Assurance of the Rent by the Render of the Fine, he joined with *Andrewes*, so that he might shew the whole special Matter, by which it appears to what Intent and Purpose he joined in the Fine. And the fourth Reason of the said Book of (a) 6 R. 2. is to be observed. For there the Justices (to avoid an Estoppel) regard the Scope and Purpose of the Parties which levied the Fine; And although the Fine be of so high Nature that it will not suffer a bare Averment against the Purport and Consens of the Fine, yet when the Law requires one of Necessity, and for Conformity, to join with another in a Fine, the Law will suffer him to shew the Truth of the Matter, to avoid Prejudice and Conclusion:

(a) 6 R. 2.  
Estoppel 211.  
Antea 74. b.  
Dyer 157. pl.  
29. 10 Co. 96. a.  
Cr. El. 917.  
1 Bulstr. 164.  
3 Rol. Rep. 473.

(b) Palm. 238.  
Cr. Jac. 482.  
1 Leon. 114.  
Qwen 21. Cr.  
El. 129. 1 Rol.  
748. Bridgman  
57. Antea 75. b.

(c) 1 Leon.  
247. 4 Leon.  
15. Cr. El. 216.  
1 Rol. 388, 389.  
1 Rol. Rep. 402.  
Cr. Jac. 399.  
3 Bulstr. 273.

(d) 1 Rol. 389.  
1 Co. 76. a.  
(e) 10 Co. 43. a.  
Antea 74. a.  
1 Rol. 347.  
2 Rol. 395.  
Palm. 226.  
Plow. 514.

*Mich. 30 & 31 Eliz.* in a Writ of Error, between (b) *Worsely* and his Wife Plaintiff, and *Charnocke* Defendant, to reverse a Fine levied by the Husband and Wife, it was adjudged, That the Fine being reversed for the Nonage of the Wife, the Husband and Wife should have present Restitution, and the Conusee should not keep the Land during the Coverture, and the Reason and Cause of the Judgment was, Because when the Husband and Wife join in a Fine, yet all the Estate passes from the Wife, and the Husband joins of Necessity and for Conformity, and therefore the Law doth permit that the Truth of it be shewed, and that the whole Estate shall be restored to the Wife, during the Life of the Husband, against the Opinion of *Cavendish*, 50 E. 3. 6. & *Hill. 33 Eliz.* in the same Court, and for the same Reason between *John* (c) *Harvey* Plaintiff, in an *Ejectione firmæ* against *Ralph Thomas* Defendant, for Lands in *St. Madry* in the County of *Cornwall*, it was adjudged, That where the Husband is seized of Land in the Right of his Wife and the Husband made a Lease to the Defendant for Twenty one Years, and afterwards he and his Wife levied a Fine *sur conusans* *de droit come ceo*, &c. to *Thomas Saint Tawby* and his Heirs, the Husband died, that the Lease was ended by his Death, and the Conusee should avoid it, for the Husband joined but for Conformity and Necessity: And there it was said, That it was adjudged in the Common Pleas, That the Conusee in such Case should avoid (d) the Charge or Statute, &c. of the Husband after his Death, as in the Case of *Eare & Snow Plowd. Com.* where a (e) Recovery



had against the Husband and Wife, of the Lands of the Husband, whereof he is seized in Tail, with a Voucher over, the Intent and Purpose of joining of the Wife might be shewed; *scil.* to bar her of her Dower, and yet the whole Recompence in Value, shall go to the Issue in Tail; and the Case before, of (a) 6 R. 2. will serve also to this Purpose.

And as to the Objection which hath been made, that forasmuch as now the Rent is rendred in Tail, with Remain-

der over, that for this Cause the Fine doth import a new Agreement of Record; it was answered and resolved, That as to the ancient Rent, it was extinct, because another Rent of another Estate, and in another Manner, by the mutual Agreement of the Parties, was granted and rendred, for two *Blunt* shall not have; and the Estate Tail cannot be

by expresse Limitation to the (b) Use of another, as it appears 24 H. 8. *Br. Feoffm. al Uses* 40. & 27 H. 8. 10. a. where

it is said, That so it was of late adjudged by the Advice of all the Justices, meaning the said Resolution in 24 H. 8.

And according to that it is adjudged in Parliament, as appears by the Statute of (c) 1 R. 3. And so it was resolved

by the greater Part of the Justices in this Case; but although the Rent was altered, yet that is no Cause for an

Alteration of the Estate of the Land, for the Jurors have found that there was not any new Consideration or new

Agreement for the Land, but that the Fine was to the Use and Intent of the first Indentures; and *Perkins, Andrewes,*

or any other, hath not any Prejudice by it, for *Blunt* contents himself with an Estate Tail, in a Rent which was of

such Sum as he had in Fee before, and therefore appointed *Perkins* to limit the Remainder in Fee over to him that he

nominated to him, but that is not any Reason to alter the Quality and Condition of the Estate of *Andrewes*; for *Blunt*

hath not any Benefit, nor *Andrewes* any Prejudice by the Alteration of the Render of the Rent; and *Andrewes* hath

not given any Consideration to have an Estate absolute, or to extinguish the Condition.

Another Reason to maintain the Resolution in (d) *Putnam's Case*, (e) *Bradbury's Case*, and (f) *Clever's Case*, was

made upon the Statute of 27 H. 8. (g) of Uses; for before that Statute, if *Blunt* had by Deed entfeoffed another of the

Mannor, to the Intent that he himself should have a Rent of 42 l. to him and his Heirs, and that the Feoffee should

be seized to the Use of *Andrewes* and his Heirs, upon certain Conditions to be performed by *Andrewes*; and

further, it was covenanted and agreed between the same Parties, That all Assurances after to be made, should be

to the Uses and Intents of the same Indentures, and afterwards *Blunt* had levied a Fine accordingly; this Fine should

not extinguish the Rent or the Condition, for that would be

(a) 6 R. 2. *Estoppel* 231. *Antea* 74. b. 77. a.

(b) Cr. Jac. 401. *Bulstr.* 184. 185. 2 Rol. 780. Co. Lit. 29. b. *Godb.* 269. 1 Rol. Rep. 332, 333. 385. (c) 1 R. 3. cap. 1.

(d) *Antea* 73. a. (e) *Antea* 73. a. (f) *Antea* 74. b. (g) 27 H. 8. cap. 10.

against

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(a) Bac. Lect.  
Sur 27 H. 8. 5,  
6, 7, 8, &c.  
1 Co. 101. b.  
212. a. 121. b.  
237. a. 140. a.  
7 Co. 10. b. 34.  
b. 6 Co. 64. b.  
Co. Lit. 272. b.  
Antea 58. b.

against the original Agreement of the Parties, and the Fine which they intended to perfect the former Assurance, if the Rent or Condition should be extinct, would destroy the Intent and Meaning of the Parties, which would be against Equity and Conscience; and therefore the Rent or (a) Use, being but a Thing of Trust and Confidence, for which there was not any Remedy but in a Court of Equity, shall not be extinguished by such Fine levied to former Uses and Intents: Then if it shall not be extinct by the Common Law, now the Statute of 27 H. 8. doth execute the Possession to the Use, in the same Manner, Quality and Condition as he had the Use.

(b) Antea 73. a.

And further, it was said, That at the Common Law before the said Act, if a Man had made a Feoffment by Deed indentured to another rendring Rent, and with Condition to re-enter; and further, it was covenanted and agreed between the Parties, That notwithstanding any Fine or other Conveyance made by the Feoffor to the Feoffee, by which the Rent and Condition should be extinct, that the Feoffee and his Heirs shall be seized, to the Intent that they shall pay the like Rent, and to be seized of the Land upon the like Condition as before, in this Case, if the Feoffor had levied a Fine, or released his Right, or made any other Conveyance to the Feoffee, by which the Rent and Condition was extinct, yet by the original Agreement of the Parties, a new Rent and a new Condition annexed to the Use of the Land should rise, and the Feoffor should have Remedy in Equity presently for the Rent: And when the Condition was broken, the Use of the Land should be newly raised to the Feoffor by the Breach of the Condition, and by the original Agreement of the Parties, notwithstanding his Release, or other Conveyance; and that is touched and moved in (b) *Putman's Case* in part cited before; and if that might have been done before the Statute, now the Possession is executed to the Use by the said Act, in the same Manner, Quality, and Condition as he had the Use; And therefore, altho' a Fine which enures by way of Release, or which goes by *Mitter le droit*, or by way of Extinguishment, cannot be (without more) to an Use, no more than the surrender of a particular Estate may be, yet after such Release, which extinguishes the first Rent or Condition, another may be by original Agreement of the Parties then Owners of the Land, and who had the absolute Disposition to raise and direct it as is aforesaid. And in this Case, *Popham C. J.* said, That the Declarat. of the Use made by the Owner of the Land should be always preferred before the Declarat. of all others; and therefore if the Disseisor and the Disseisee levy a Fine, and the Disseisee limit the Use to *A.* and the Conusee of the Fine to the Use of *B.* and the Disseisor to the Use of *C.* and *A.* limit the Use to one, the Recoveror to another, and the Vouchee to a third, the Limitation of *A.* shall stand.

1 Rol. 438.  
Moor 106.

Fourthly, It was resolved, That by the Death of *Andrewes* the Condition was broken, for when the Feoffee



or Grantee upon Condition is, to make an Estate to the Feoffor or Grantor, and no Time is limited, regularly it is true, that the Feoffee hath Time to do it during his (a) Life, if the Feoffor or Grantor do not hasten it by Request, and upon Request and Day or Time limited when he will have it, the Feoffee or Grantee ought to make it accordingly; and if no Request be made, and the Feoffee or Grantee, who ought to perform the Condition, dies, the Condition is broken, for he hath not performed the Condition within the Time prescribed to him by the Law, which was during his (b) Life: But yet this general Rule doth admit of divers Exceptions and Limitations. For in this Case of an (c) Advowson, *Andrewes* had not Time, during his Life, although no Request was made, but upon Contingent, that is to say, If no Avoidance fell in the mean Time, for if the Grantee should stay till the Avoidance falls, then *ipso facto* the Condition is broken, because *Blunt* cannot have all the Effect which by the Grant he ought to have, and that is, to have all the Presentations during his Life, and the Advowson is become in another Plight than it was: So if *A.* enfeoff *B.* *Mait*, upon Condition that he grants to *B.* an Annuity or Rent during his Life, payable (d) yearly at the Feast of *S. Michael*, and the Annunciat. in this Case the Feoffee hath not Time during his Life, to make this Grant, but he ought to make it before the Feast of *S. Michael*, or (e) otherwise he will not have the Annuity or Rent during his Life. And that may be gathered upon the Book in 14 *E. 3. Det.* (f) 138. that in Case of a Grant of a Rent, he shall not have Time during his Life: And if two not married be (g) enfeoffed upon Condition to reinfeoff the Donor or Feoffor, or one of them dies, yet the other may perform the Condition; but if he who survives hath a Wife, then the Condition is broken, for if he should make the Reinfeoffment, his Wife should be endowed: And in all the said Cases, when the Condition is that the Feoffee shall make the Estate, and the Feoffee dies, there the Condition is broken, and none can perform it, for the Condition extends only to the Feoffee, but if the Condition be, That the (h) Feoffee or his Heirs shall make an Estate to the Feoffor, and no Day is limited, there, although the Feoffee dies, the Condition is not broken, for the Feoffee only is not bound by the Condition during his Life, to make the Feoffment, so as by his Death the Time appointed to perform the Condition shall be lost, but the Condition doth extend also to his Heirs indefinitely, without Limitation of Time, and the Condition in such Case being without Limitation of Time or Person, cannot be broken by not making the Estate; but upon Request made by the Feoffor and his Heirs, and with that agrees the Book 3 & 4 *Phil. & Mar. Dyer* 138, 139. the Earl of *Surry's* Case; for the Condition there (admitting it to be a Con-

(a) 1 Rol. 438.  
Co. Lit. 208. b.  
218. b. 219. a.  
Moor 106. 472.  
3 Anderl. 73.

(b) Co. Lit.  
219. a.  
(c) 1 Rol. 438.  
439. Moor 472.  
Co. Lit. 222. b.  
3 Anderl. 73.

(d) 1 Rol. Rep.  
374. 1 Rol. 439.

(e) Co. Lit. 208.  
b. 1 Rol. Rep.  
374.

(f) 1 Rol. Rep.  
374. 1 Rol.  
439.

(g) 1 Rol. 451.

(h) 1 Rol. 451.  
Co. Lit. 219. a.

dition) being without Limitation of Person and Time, was not to be performed before Request: But in the Case at Bar, if a Day had been limited before which *Andrewes* by the Proviso should grant the Advowson, there, if before the Day *Andrewes* had died, the Condition should not be broken.

(a) Co. Lit. 219.  
2.

(b) Co. Lit.

219. 2.

(c) Dyer 262.

pl. 30. Palm.

315. 549.

5 Co. 22. 2.

Cr. El. 398.

Moor 342.

for when the Parties by their (a) mutual Agreement, give a certain Time, within which the Condition shall be performed, and within that Time he who ought to perform it dies, so that the Condition becomes impossible by the Act of God, there the Estate doth remain (b) absolutely discharged of the Condition. See 15 H. 7. 13. a. 33 H. 6. 25, 27. 9 Eliz. (c) Dyer 262. and Sir Tho. Wrotte's Case, Pl. Com. 456. And therefore it is requisite in such Cases, when a Day is limited, that the Condition do extend not only to the Feoffee or Feoffees, but also to their Heirs, for Fear of Death before the Day: As if one intends to enfeoff another, upon Condition that the Feoffee, before such a Feast, or within a Year, &c. shall give back the Land to the Feoffor, &c. it is requisite that the Condition be, That the Feoffee, or his Heirs, before such Feast &c. give back, &c. or otherwise, if the Feoffee dies before the Feast, the Condition is become impossible, and the Feoffor hath no Remedy by Law to compel the Heirs of the Feoffee to give back the Land.

And another Difference was also agreed, When the Estate is to be made by the Condition to the Feoffee, and when to

(d) 6 Co. 31. 2.

Co. Lit. 208. b.

219. 2. b. Hob.

51. 8 E. 4. 14.

2. b.

a (d) Stranger; for when the Estate is to be made to a Stranger, the Feoffee ought to make it within convenient Time, for he to whom the Feoffment is to be made, being a Stranger, need not make any Request, as the Feoffor who is a Party, ought to do. And in such Case, when a Stranger is to be enfeoffed, the Feoffee ought within convenient Time, to require the Stranger to appoint a Time when he will have the Feoffment made to him, and at that Time he ought to make it; and so the Feoffee ought to give Notice to the Stranger, and request him to appoint a Time as is afore said. And therewith agree 44 E. 3. g. a. b. 9 E. 4. 22. b. 2 E. 4. 3. b. & 4. a. 19 H. 6. 67. b. 73. a. 76. a. And in the Case of *Littleton*, fol. 82. (e) where a Feoffment is made upon Condition that the Feoffee shall enfeoff many, &c. there it doth not appear that those who should be enfeoffed were Strangers, or that they were Strangers, whether they died before the Feoffee could enfeoff them.

(e) 1 Jones 181.

Co. Lit. 218. b.

219. 2. b. 8 Co.

90. b. Br. Con-

dition 33. Fitz.

Condition 5.

Lit. Sect. 352,

353.

(f) Co. Lit.

319. b.

And another (f) Difference was taken by some when the Feoffee dies, and when the Feoffor dies before any Estate made according to the Condition, in the one Case the Condition is broke, and in the other not. As if A. enfeoff B. upon Condition that B. shall give back the Land to A. and his Wife, and to the Heirs of their two Bodies begotten, the Remainder to C. in Fee, in this Case, if B. dies, the Condition is broke as is afore said; but if A. dies, the Condition is not broke.



broke, for the Feoffee hath Time during his Life if he be not hastned by Request, by the Feoffor or his Heirs, &c. and that appears by *Litt. Chap. Condit. fol. (a) 82.* for in the same Case *Littl.* saith, that if such Feoffee will not make such Estate when he is reasonably required by them who ought to have the Estate by Force of the Condition, then may the Feoffor or his Heirs enter, by which it appears, that as long as the Feoffee lives, the Condition cannot be broke by the Death of the Feoffor; For *Littleton* puts in his Case that the Feoffor, &c. was dead. But against that, 18 *Aff. pl. ult.* was cited, where the Case was, That the L. (b) *Clifford* held his Barony and the Sheriffwick of *Westmorland* of the King by grand Serjeanty in *Capite*, and the K. gave a Licence to the L. *Clifford* that he might thereof enfeoff several Chaplains in Fee, so that they gave back the same to the said L. *Clifford* and the Heirs Males of his Body, the Remainder over. The L. *Clifford*, according to the said Licence, did enfeoff the Chaplains; and before they had made the Re-gift accordingly, the Lord *Clifford* died, his Son and Heir within Age, and in Ward to the K. by reason of other Lands; and all the said Matter was found by Writ of *Dien clausit extremum*, and returned into the Chancery; out of which and of the Charter of Licence, a *Scire facias* issued against the said Chaplains if they could say any Thing why the said Lands so occupied by them in Dis-herison of the Heir, and to toll the King's Wardship, should not be seised into the K's Hands; who appeared and pleaded the K's Licence, and the Feoffment of the L. *Clifford*, and so they were the K's Tenants by his Licence; and as to the Re-infeoffment, it was at their Will to do it; with that, that they were always ready to have made the Estate to the L. *Clifford* in his Life, and that he would have it by Fine, and thereupon brought a Writ of Covenant, and died pending the Writ; and after his Death they endowed the Wife of the L. *Clifford*, and were always ready, if they had the K's Licence, to make the Re-gift to the Son and Heir to make the Estate according to the Condition: And Judgment was given that the Tenements should be seised into the K's Hands, and that he should have the Profits thereof from the Death of the L. *Clifford*. But note, Reader, (as I conceive) the said Judgment doth not (c) contradict the Opinion of *Littleton*, for *Sadlier*, who pronounced the Judgment, gave two Reasons and Causes of the said Judgment.

1. Because by the Licence of the King, which is here of Record, and by the Office also returned, it appears upon Record that the Chaplains had no other Estate than upon Condition.

2. That it appears by their Plea, that they had Time in the Life of the Lord *Clifford* to have performed the Condition: The Effect of the first Reason is, for as much as the

(a) Co. Lit. 212.  
b. Antea 79. b.

(b) 18 Aff. 18.  
Br. Condition  
105. Co. Lit. 222.  
a. b. 6 Co. 74. 2.  
8 Co. 90. b.  
91. 2. 1 Rol. 438  
Postea 81. 2.

(c) 8 Co. 91. 2.

the Land was held *in Capite*, and the Licence was special to enfeoff the Chaplains, so as they gave back to the Feoffor in Tail, &c. if they had made the Gift in Tail to the Lord himself, they had pursued the Licence; but when the Lord himself died, they could not, by Force of the said Licence, (which is always taken strictly and ought to be pursued) make the Gift to his Son: Then for as much (as it appears by the 2d Reason) that they had Time in the Life of the L. Clifford to have performed it, and the not doing of it drew a Charge to the Heir to purchase a Licence, and perhaps the K. would never give Licence, and then the Estate would never (without Charge, and Cause of Seisure for Want of Licence) be made, and all that in Default of the Feoffees who had Time to make it; and if they had pursued the Licence, they ought to have made the Re-gift to the Lord himself; and therefore it is as much as if the Feoffees had bound themselves in a Stat. or Recognis. which after their Feoffment would charge the Land; so if they without Licence should give it back to the Heir, his Lands should be seised into the K's Hands for Alienation (a) without Licence; for this Cause the Entry of the Heir was lawful. And note, in the said Case, that the Feoffees in their Plea said, That they were always ready to have enfeoffed the Heir if they had had Licence so to do, by which it appears that the said Licence did not warrant them to make the Gift to the Heir.

(a) Co. Lit. 222.

(b) Stamf. Prae.  
208. 27. b.

(c) Stamf. Prae.  
208. 29. a.

Also it is said in the said Case by *Hampton*, That if the King seise the Land, it ought to be in his own Right, and the Heirs of the L. Clifford dis-inherited; for at that Time he thought, as it seems, that Land held by Grand Serjeanty, aliened without Licence, should be forfeited to the King: For that see the Stat. *de Prærogativa Regis c. 7. (b) de Serjeantibus alienatis sine licentia Regis consuevit Rex arrentare hujusmodi Serjeantis per rationabilem extentam inde faciendam*. And accordingly, I have seen a Precedent 26 E. 1. *Ex. Rememorat' domina Regina in Scaccario*, That Land in *Chefferton*, in the County of *Warwick*, and temp. E. 1. of Lands in *Hadnet* in the County of *Salop*, were seised and granted in Fee, rendring Rent, by Justices in *Eyre*, for Alienation without Licence, for then Justices in *Eyre* might have granted such Land in Fee, rendring Rent, as a Justice of a Forest (which in Effect, as to this Purpose, are Justices in *Eyre*) at this Day may of Lands enclosed within a Forest without the King's Leave. And (c) *Wilby*, in 14 E. 3. *Quare impedit* 54, saith That if Lands held by Grand Serjeanty be aliened without Licence, they are forfeited by the Common Law, because Service of Body cannot be transferred to another.

But note, Reader, at this Day it is without Question that Land held by Grand Serjeanty shall not be forfeited for Alienation without Licence; for if it were admitted that



that they were forfeited, as *Wilby* said at the Com. Law, yet it is declared contrary, and (a) remedied by the Act of 1 E. (a) F. N. B. 175. 2. cap. 12. by which it is provided, That whereas divers People of the Realm complain they are grieved by Reason that Lands and Tenements held of the King in chief, (as all which are held by Grand Serjeanty are) and aliened without Licence, have been held as Forfeited; hereafter, in such Case, a reasonable Fine shall be taken. And so at all Times after that Stat. when Land held by Grand Serjeanty hath been aliened without Licence, a Fine hath been taken, and no Seifure ever made for the Forfeiture; Et (b) *optimus legum interpretres consuetudo*. And so it was held M. 38 & 39 Eliz. by the two Chief Justices *Popham* and *Anderson*, Periam Chief Baron, and several other Justices. And the Reason for which I collect the Land was held by Grand Serjeanty is, first, because the Book saith, that he aliened great Part of his Heritage, and the Sheriffwick of *Westmorland*, which is Parcel of his Barony; and every (c) Barony, in antient Time, was held by Grand (d) Serjeanty. 2dly. *Hampton* there (either forgetting the Stat. of 1 E. 3. or not conceiving it to extend to Land held by Grand Serj.) saith, That the K. seised in his own Right, and dis-inherited the Heirs, (f. il. If an Estate shall be made without Licence) which, without Quest. by the exprefs Letter of the Act of 1 E. 3. could not be, if it were held in *Capite* and not by Grand Serj. So it appears that the Book in 18 (e) *Aff.* is resolved upon other Reasons, and doth not oppose the Opinion of *Litt.* who, without Quest. had seen the said Book. And I perceiving the Book in 2 H. 4. 5. b. (f) to agree with *Litt.* caused Search to be made for the Record of the said Case: Et inter recorda de *Thesaur* recepit *Scaccarii sub custodia Thesaur* & *Camer* remanen' inter placit' de juratis & *Aff.* de ann. 1 H. 4. in Com. Devon. the Record of the said Case was found; and the Case was, That *Robert French* brought an Affise against *William Dean* and *Thomasine* his Wife, and others, of his Freehold in *Chudleigh*, and the Affise was taken by Default, and a special Verdict found, that is to say, *Quod quidam Thomas Glasier fuit seifitus de prad' tenementis cum pertinentiis in eorum visu positus in dominico suo ut de feodo, & sic inde seifit' existens eadem tenementa cum pertinen' dedit & concessit quibusdam Jo. Prou & Rogero Cockshead, habend' sibi & heredibus suis, sub conditione quod iidem Johannes & Rogerus ipsum Thomam & pradict' Thomasinam adtunc uxorem ipsius Thom' de eisdem tenementis reseoffaret, habend' eisdem Thomae & Thomasina & heredibus de corporibus suis exeuntibus, remanere rectis heredibus ipsius Thomae; virtute cujus iidem Johannes & Rogerus de tali statu*

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fuerunt

a. 235. c.  
Stamf. Præ. 29.  
2. Inst. 66.  
1 Jones 111.  
Co. Lit. 43. b.  
34 E. 3. 15.

(b) 10 Co. 70. b.  
2 Inst. 18.

(c) Davis 62, 63

(d) Jones 109, 111

(e) 18 Aff. 18.  
Antea 80. a. Br.  
Condition 105.

6 Co. 74. a. 8 Co.  
90. b. 91. a. Co.  
Lit. 222. a. b.

1 Roll. 438.  
(f) Fitz. Condi-  
tion 5. Br. Con-  
dition 33. 1 Co.

137. b. 11 Co. 83.  
b. Postea 81. b.  
1 Jones 181.

fuertint inde seifitii, & poſtea prædictus Thomas obiit ſine herede de corpore ſuo & de corpore ipſius Thomafina exceunt abſque aliquo reſcoffament' eiſdem Thom' & Thomaf. juxta conditionem præd' fac', ſive per ipſum Thomam in vita ſua exact', poſt cujus mortem præd' Thomafina cepit in virum præd' Will. Deane: Poſtmodumque iidem Will. Deane & Thomafina petierunt a præſato Johanne & Rogero ſcoffamentum eidem Thomafina de præd' tenementis juxta conditionem præd' fieri: Super quo iidem Johannes & Rogerus per quoddam ſcript' ſuum indentatum anno 14 R. 2. conceſſerunt & confirnaverunt præſatis Willielmo Deane & Thomafina præd' tenementa cum pertinentiis habend' & tenend' eiſdem Willielmo & Thomafina, ad totam vitam ipſius Thomafina, remanere inde reſtis heredibus præd' Thom' ſecundum formam conditionis præd': ſuper quo Johannes Vyen & Mariotta uxor ejus, in jure ipſius Mariotta, ut ſoris & heredis præd' Thoma ſupponend' prædict' ſcoffamentum prædict' Will. Deane & Thomafina de tenement' præd' in forma præd' factis fuiſſe contra formam conditionis præd' in tenementa illa intraverunt, & inde præd' Robertum French per cartam ſuam, &c. ſcoffaverunt, &c. virtute cujus idem Robertus in tenementa præd' intravit, & iidem Willielmus Deane & Thomafina ipſum inde recenter amoverunt; Et ſi amotio illa diſſeiſina adjudicari debeat necne, dicunt quod ipſi omnino ignorant, & petunt diſcretionem Juſticiar', &c. And Judgment was given againſt the Plaintiff.

Out of this Record, I obſerve four Things: Firſt, That in the ſpecial Verdict there is no Mention made at what Time the Feoffment was made upon Condition, ſo that (if the Time were material) it might appear how long Time was paſt between the Feoffment upon Condition and the Death of the Feoffor; and that answereth the Objection which ſome make, That in the ſaid Caſe of Littleton, it ſhall be intended, that thoſe to whom the Eſtate by the Condition ſhould be made, died preſently, ſo that the Feoffees had not convenient Time to make the Eſtate according to the Condition; for if the Law ſhould be ſuch, then the Time would be material, and by Conſequence, the Verdict, which found no Time, was imperfect, upon which no Judgment could be given. But the contrary appears by the ſaid Book of (a) 2

(a) Antea 81. 2.  
Fitz. Condition  
5. Br. Condition  
33. 1 Co. 137. b.  
11 Co. 83. b.  
2 Jones 181.

Co. Lit. 218. b.

Secondly, That the Feoffees need not make the Eſtate either to the Feoffor in his Life, or to any other after his Death, until Requeſt made, and theret. the 2d Huſb. and his Wife made a Requeſt,



a Request, as it is expressly found by the Assise.

Thirdly, That although by the Law the Estate made to the Wife for her Life ought to have been without (a) Impeachment of Waste, as appears by *Littleton, fol. 82.* and that the Wife is Covert, and it trencheth to her Prejudice; yet for as much as it was the Folly of the Wife, being sole, to take such a Husband who would accept of such Estate; and also because the Estate for Life is the Substance of the Estate which should be made by the Feoffee, and the Privilege to be without (b) Impeachment of Waste, is a Thing collateral, and only for the Benefit of the Husband and Wife, the omitting of it being for the Benefit of the Heir of the Feoffor, is not any Breach of the Condition to give him Cause of Re-entry, for then the Wife would lose her Estate also, which would not be reasonable.

Fourthly, That although the most sure Way had been that the Estate should be made to the Wife alone, yet the Estate being made (c) to the second Husband and the Wife, for the Life of the Wife, it is no Breach of the Condition, for none is prejudiced thereby; And if the Estate had been made only to the Wife, the Husband would have had as much Power and Benefit as he now hath, and therefore it is all one in Substance and Effect.

(a) Co. Lit. 219.  
b. Lit. Sect. 352.  
Jones 181.

(b) 2 Co. 23. 2.  
72. 2. 4 Co. 63. 2.  
9 Co. 9. 2. 11 Co.

82. b. 83. b.

1 Rol. Rep. 182.

2 Rol. Rep. 325.

Moor 18. 317.

327. 2 Inst. 146.

Hob. 132. Poph.

193. 194. 195.

Latch. 269. 270.

Bridgm. 102.

Dyer 47. pl. 12.

Plowd. 132. b.

Cro. Jac. 216.

2 Rol. 835. Hecl.

77. Co. Lit. 220a.

(c) Co. Lit. 219.

b. 220. 2.

M 2

De

*De Termino Sancti Mich.  
Anno Regni Domina Elizab.  
nunc Regina Angliæ 41 & 42.  
Rot. 144.*

**M**emorand' quod alias scil. termino Paschæ ultimo præterito coram domina regina apud Westm' ven' Georg' Stroude armiger, per Simon Spatchurst attornat' suum. Et protulit hic in cur' dict' dom' reg' tunc ib'm quand' billam suam vers. Radolphum Horsey milit', Richard' Veale, & Edward' Goore gener' in custod' Marr', &c. de placito transgres. & eject' firm'. Et sunt pleg. de prof. scz' Jo. Doo, & Rich' Roo. Quæ quid' bill' sequit' in hæc verba, ff. Dorc' ff. Georg' Stroude arm' querit' de Radulph' Horsey milit' Rich. Veale, & Edward' Goore gener' in custod' Marr' Marefc. dom' reg' coram ipsa reg' existen' pro eo, viz: quod cum quid. Will' Albert septim' die April' anno reg' dom' Eliz' nunc reg' Ang' 41. apud Melcum in com' prædict' dimississet, concessisset, & ad firmam tradidisset præf. Georg' unum messuag' centum & viginti acr' terr', quadragint' acr' prati, ducent' acr' pasturæ, & cent' acr' jampn' & bruere cum pertin' in Melcum prædict' in com' prædict' Habend' & tenend' tenementa prædict' cum pertin' præf. Georg' & assign' suis, a festo Annunc' beatæ Mar' virgin' tunc ultim' præterit' usque finem & termin' sex annor' & dimid' unius anni extunc prox' sequen' plen' complend' & finiend': Virtute cujus quid' dimiss. idem Georg' in ten'ta prædict' cum pertin' intravit, & fuit inde possess. quousque prædict' Radulph' Horsey, Rich' Veale, & Edward' Goore, postea scz' undecimo die April' anno 41. suprad' vi & armis, &c. in ten'ta præd' cum pertin' super possess. ipsius G. inde intraver', & ipsum Georg' a firma sua præd' inde term' suo præd' nondum finit' ejecer', expuler', & amover', & ipsum G. a possessione sua inde extratenuer', & adhuc extratenent, & alia enormia ei intuler' contra pacem dict' dom' reg'. Et ad dampnum ipsius Geor' cent' libr'. Et inde produc' sectam', &c. Et modo ad hunc diem scz. diem Martis prox' post octab. Sancti Michael' isto eodem termino, usque quem diem prædict' Rad' Horsey, R. Veale, & Edward'



Edward' Goore habuer' licenc' ad billam prædict' interloquend', & tunc ad respondend', &c. cor' dom' regina apud Westm' ven' tam præd' Georgius Stroude per attornat' suum præd' quam præd' Rad' Horsey, R. Veale, & E. Goore, per Jac' Hyde attornat' suum, & iidem Rad' Ric' & Edw' defend' vim' & injur' quando, &c. Et dicunt' q'd ipsi non sunt inde culpab', & de hoc pon' se super patriam. Et præd' Georg' Stroude fil' ter, &c. Ideo ven' inde Jur' cor' dom' reg' apud West' die Merc' proxim' post octab' S. Hill'. Et qui nec, &c. ad recogn', &c. Quia tam, &c. Idem dies dat' est partibus præd' ib'm, &c. ff. Postea continuat' inde processu inter partes præd' de pl'to præd' per Jur' posit' inde inter eas in respect' coram dom' reg' apud Westm' usq; diem Merc' prox' post xv. Pasc' nisi Justic' dom' reg' ad Assis. in com' præd' capiend' assign' prius die Lunæ in tertia septimana quadragesimæ apud Dorc' in com' præd' per form' statuti, &c. ven' pro defect' Jur', &c. Ad quem quid' diem Merc' coram dom' reg' apud Westm' ven' partes præd' per attorn' suos præd'; Et præf. Justic' ad Assis. cor' quibus, &c. mis. hic record' suum cor' eis habitum in hæc verb' ff. Postea die & loco infracont' coram Tho' Walmesley uno Justic' dom' reg' de banco, & E. Fenner uno Justic' dictæ dom' reg' ad pl'ta cor' ipsa dom' reg' tenend' assign' Justic' ejusdem dom' reg' ad Assis. in com' Dorc' capiend' assign' per form' statuti, &c. ven' tam infranomin' G. Stroude arm' per T. Clayton attorn' suum, quam infrascr' R. Horsey miles, R. Veale, & E. Goore, per H. Collier attorn' suum: Et Jur' jurat' unde infra sit mentio exact' quid' eorum ven', & quid' eorum non ven', prout patet in panello, &c. Et quid' eor' Jur' modo comparen', viz. R. Ham, T. Toomer, J. Burt, H. Harbyn gen', J. Yong gen' J. Butler gen', W. Wythington, J. Paine, & C. Dolling, in Jurat' præd' jurat' existunt, Et quidam eorundem Jur' modo sc' comparen', viz. Thom' Keate, E. Carter, R. Chip, H. Squib, & G. Frome, eo quod ipsi int' partes præd' suspectuos. invent' existunt a panello illo penitus extrahunt. Et quia resid' Jur' ejusdem jur' non comparuer' ideo alii de circumstantibus per vic' com' præd' ad hoc elect' ad requisic' præd' Geo' Stroude ac per mandat' Justic' præd' de novo apponunt', quor' nomina panello infrascr' affilant' secund' form' stat' in hujusmodi casu inde nuper edit' & provis. Ac Jur' sic de novo apposit', viz. C. Jay, N. Browne, & T. Eyres exact' simil' ven', quia ad veritat' de infracont' simul cum aliis Jurat' præd' pri' impan' & jur' dicend', electi, triati, & jur', dic' super sacrament' suum quod tenta infra. cum' perrin' in quib' supponit' transg. & ejection' infra script' fieri, sunt & a tempore cui' contrarii memor' hom' non existit fuer' parcell' maner' de Nether Melcum, alias Melcum

# BINGHAM's Case. PART II.

cum Bingham cum pertin', Et quod dict' maner' de Nether Melcum alias Melcum Bingham cum pertin' unde, &c. jacet infra parochiam de Melcum in com' præd', quodque ante infraſer' tempus quo ſupponit' tranſg' & ejection' infraſer' fieri, quidam R. Bingham ſen' fuit ſeiſit' de præd' maner' de Nether Melc', alias Melc' Bingham cum pertin' unde, &c. in dominico ſuo ut de feodo. Et ſic inde ſeiſit' maner' illud cum pertin' tenuit de quodam Jo. Horſey Milit', ut de manerio ſuo de Over Melc' alias Horſeys Melcum, alias Sturges Melcum in com' præd' per ſerviciũ Militar', viz. per homagium, fidelitat', & ad ſcutagium dom' reg' 40s. cum accideret 2s. & ad plus, plus, &c. Et ad minus, minus, &c. Ipſoque R. Bingham ſic inde ſeiſit' exiſten', ante infrac' tempus quo, &c. ſc' in craſtino S. Trin' an' regni dictæ dom' reg' nunc duodeſimo, quidam finis levavit in curia dictæ dominæ reginæ apud Weſt' in com' Midd' cor' Jac' Dyer, Richardo Weſton, Ric' Harper, tunc Juſtic' dictæ dominæ reginæ de banco, & aliis dominæ reginæ fidelibus tunc ibi preſentibus, inter T. Buckley & H. Gawen gen' quer', & prædictum Ro. Bingham ſen' deforc', de maner' de Nether Melcum, alias Melcum Bingham præd' cum pertin' unde, &c. per nomina manerii de Nether Melcum, alias Bingham's Melcum cum pertin', ac quinque meſuag' quatuor roſi', quatuor horreor', quinque gardinorum' duorum pomarior', centum & viginti acr' terr', triginta acr' prati, treſcent' acr' paſtur', octo acr' boſci, & viginti acr' jampnor' & bruere cum pertin' in Nether Melcum, alias Bingham's Melcum, unde pſitum conventionis ſum' fuit inter eos in eadem cur', ſc' quod præd' R. Bingham recogn' præd' maner' & tenementa cum pertin' eſſe juſ ipſius T. Buckley, ut illa quæ idem T. Buckley & H. Gawen habuer' de dono præd' Rob' Bingham: Et illa remiſit & quiet' clam' de ſe & hæred' ſuis præd' Tho. Buckley & Henr' Gawen, & hæred' ipſius Thomæ imperpetuum. Et præterea idem R. Bingham conceſſit pro ſe & hæred' ſuis, quod ipſi warr' præd' T. Buckley & H. Gawen, & hæred' ipſius Thomæ prædict' maner' & tenementa cum pertin' contra omnes homines imperpetuum, cui' quidem finis tenor ſequitur in hæc verba. ſſ. Dorc' ſſ. Hæc eſt finalis concordia fact' in cur' dom' reg' apud Weſt' in craſtino S. Trin' anno regni Eliz. Dei gratia Ang' Franc' & Hib' reginæ fidei deſenf. &c. a conqueſtu duodeſimo, coram Jac' Dyer, Ric' Weſton, & Ric' Harper Juſtic', & al' dom' reginæ fidel' tunc ibi preſentibus, inter T. Buckley, & H. Gawen gen' quer', & R. Bingham ſen' deforc' de maner' de Nether Melc' al' Bingham Melc' cum pertin': Ac de quinq; meſ. quat' roſi', quat' horr', quinq; gard', duob' pomar' cent' & viginti acr' terr', trigint' acr' prati, centum  
acr'



acr' pastur', octo acr' bosci, & viginti acr' jampnor' & bruere cum pertin' in Nether Melc', alias Bingham's Melc' unde pl'tum convention' sum' fuit int' eos in ead' cur', sc. quod præd' Rob' recogn' præd' maner' & ten'ta cum pertin' esse jus ipsi T. ut ill' quæ iid' T. & Henr' habuer' de don' præd' Rob'. Et ill' remis. & quiet' clam' de se & hæred' suis præd' Th. & H. & hæred' ipsius Th. imperpet'. Et præterea idem R. concessit pro se & hæred' suis, quod ipsi warr' præd' T. & H. & hæred' ipsius Th' præd' maner' & ten'ta cum pertin' cont' omnes homines imperpet'. Et pro hac recogn', remissione, quiet' clam' warr' fine & concord', iidem T. & H. dederunt præf. Rob' 150 l. sterling. Quæ quid' finis de maner' & ten'tis præd' cum pertin' unde, &c. in form' præd' levat', habit' & levat' fuit ad usus præd' R. B. sen' & Jan' uxor' ejus, & hæred' ipsius R. imperpetuum. Virtute cujus ac vigore cujusd' actus Parliament' de usib' in possession' transferend' fact' apud West' anno regni H. nuper regis ang. octavi 27. edit' & provis. idem R. Bingham sen' & Jana fuer' feisit de maner' de Nether Melcum alias Bingham's Melc' præd' cum pertin' unde, &c. viz. eisdem Rob' & Janæ & hæred' præd' Rob' imperpetuum. Et iidem Jur' ulterius dicunt super sacrum' suum præd' quod præd' Rob' Bingham sen' ad tunc, sc. fuit feisit in dominico suo ut de feodo, de & in maner', terr', & ten'tis voc Melcum Bingham. scitut' & existen' in parochia de Toller' porcor' in præd' com' Dorc'. Prædictoq; Rob' sic de maner' ac ten'tis illis, ac de præd' maner' de Nether Melcum alias Melcum Bingham, cum pertin' unde, &c. feisit existen', quidam finis levavit in cur' dict' dom', reg' nunc apud West' præd' ante infrac' tempus quo, &c. sc' in crastino S Trin' anno regni dictæ dominæ reg' nunc 20. cor' J. Dyer, R. Manwood, R. Mounson, & T. Meade, tunc Justic' ipsi dom' reg' de banco, & aliis dict' dom' reg' fidelibus tunc ibi presentibus, inter quosd' R. Rogers militem, N. Turb. & J. Williams armig. tunc quer', & præd' R. Bingham sen' armig. tunc deforc', de dicto maner' de Nether Melcum alias Melc' Bingham unde, &c. Ac de dicto maner' de Wolcum Bingham cum pertin', per nomina maner' de Melc' Bingham & Wolcombe Bingham cum pertin': Necnon sex mesuag. duor' toft', mille & trescent' acr' terr' 300. acr' prati, 50. acr' past', 20. acr' bosci, & mill' acr' jampn' & bruere cum pertin' in Nether Melc' Toller' porcor', Mapowder, & Haselbery Bryan in com' Dorc'. Et 8. mes. 3. toft', 6. gardin', mille acr' terr', cent' acr' prati, 300. acr' past' & 300. acr' jampn' & bruere cum pert' in Codf. Mary Codf. P. Ashton, Giff. Burdchalk, Alderb' East Grimsted, & West Grimsted in com' Wilt' unde pl'it' conven' sum' fuit int' eos in ead' cur' sc' quod R. Bingham sen' recogn' præd' maner' & ten't' cum pertin' esse jus ipsius R. Ro. ut illa quæ iidem R. Rog. N. Turb. & J. Williams habuer'.

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habuer' de don' præd' R. B. Et ill' remis. & quiet' clam' de se & hæred' suis præd' R. Rogers, Nic' Turberville & J. Williams, & hæred' ipsius Ric' Rogers imperpet'. Et præterea idem R. Bingham concessit pro se & hæred' suis, quod ipsi warr' præd' R. Rogers, Nic' Turberville, & J. Williams, & hæred' ipsius Ric' Rogers præd' maner' & tenementa cum pertin' cont' præd' Rob' Bingham & hæred' suos imperpetuum: cujus quidem finis tenor sequitur in hæc verba. Hæc est finalis concordia fact' in cur' dominæ reginæ apud Westm' in crastino S. Trin', anno regni Eliz' Dei gratia Angliæ, Franciæ, & Hiberniæ Reginæ, fidei defensor', &c. a conquestu 20. coram Jac' Dyer, Rog' Manwood. Rob' Mounson, & Tho' Moade Justic', & aliis dominæ reginæ fidelibus tunc ibi præsentibus, inter R. Rogers militem, N. Turberville armig' & Johan' Williams armig' quer', & Rob' Bingham sen' armig' deforc' de maneriis de Melcum Bingham, & Wolcombe Bingham cum pertinen', necnon de sex mesuag' duobus toftis, mille & trescent' acr' terr', trescent' acr' prati, quingent' acr' pastur', viginti acr' bosci, & mille acr' jumpnorum & bruere cum pertin' in Nether Melcum, Toller' portor', Mapowder, & Haselbery Bayan in com' Dorc'. Et de octo mes. trib' toftis sex gardinis, mille acr' terr', centum acr' prati, trescent' acr' pastur', & trescent' acr' jumpnor' & bruere cum pertin' in Codford Marie Codford, Peter Ashton, Gifford, Burdchalke, Alderbury, East Grimsted, & West Grimsted in com' Wiltf. unde placitum convention' sum' fuit int' eos in ead' cur', sc. quod præd' Robertus recogn' præd' maneria & ten'ta cum pertin' esse jus ipsius Ric' ut ill' quæ iidem Ric' Nic' & Joh' habent de dono præd' Roberti. Et ill' remisit & quiet' clam' de se & hæred' suis, præd' Ric' Nic' & Johanni, & hæred' ipsius Ric' imperpetuum, Et præterea idem Robertus concessit pro se & hæred' suis, quod ipsi warr' præd' Rich' Nic' & Joh' & hæred' ipsius Ric' præd' maneria & ten'ta cum pertin' cont' præd' Robertum & hæredes suos imperpetuum. Et pro hac recogn', remissione, quiet' clam' warr', fine & concord', iidem Richard', Nic' & Joh' dederunt præd' Rober' octingent' viginti & sex li. sterling. Quæ quidem finis in form' præd' levat', habit' & levat' fuit de præd' maner' de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. ad usum præd' R. B. sen' pro termino vitæ suæ, & post ejus decessum ad usum præd' R. B. tunc filii & hæred' apparen' ipsius R. B. sen' & hæred' de corpore suo super corpus Annæ tunc uxoris præd' R. B. filii procreand'. Et pro defectu talis exitus ad usum rector' hæred' præd' R. B. sen' imperpetuum. Ac de præd' maner' & tenementis voc' Wolcum Bingham cum pertin' ad usum præd' R. Bingham filii & præd' Annæ

&



& hæred' de corpore ejusdem Rob' Bingham filii super corpus prædict' Annæ legitime procreand', & pro defectu talis exitus ad usum rectorum hæred' præd' Rob' Bingham sen' imperpetuum. Virtute cujus finis, ac vigore præd' actus parliament' de usibus in possession' transferend' edit' & provis. præd' Robert' Bingham sen' fuit seisit' de præd' maner' de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. in domin' suo ut de liber' tenement', pro termino vitæ suæ, remanere inde dict' Rob' Bingham jun' in feod' talliat', scz' sibi & hæred' de corpore suo procreand' super corpus dict' Annæ remaner' inde rectis hæredibus ipsius Rob' Bingham sen' imperpet'. Et præterea præd' Rob' Bingham jun' & Anna uxor ejus fuer' seisit' de præd' manerio, terr', & ten'tis voc' Melcum Bingham cum pertin', viz. idem Robertus Bingham jun' in dominico suo ut de feod' talliato, viz. sibi & hæred' de corpore suo super corpus præd' Annæ uxoris suæ legitime procreat', & præd' Anna in dominico suo ut de libro tenemento pro termino vitæ suæ, reman' inde rectis hæred' ipsius Rob' Bingham sen' imperpet'. Et iidem Jur' ulter' dicunt super sac'm suum præd' quod tempore levationis præd' ultim' recitat' finis per præd' Robert' Bingham sen' in forma præd' h'ti, præd' Joh' Horsey fuit seisit' de præd' manerio de Over Melcum, alias Horseys Melcum, alias Sturges Melcum cum pertin' in d'nico suo ut de feodo; Ipsiq; Jo' Horsey sic inde seisit' existen', quidem finis levavit in cur' dict' dom' reg' nunc, apud castrum Hertf. in com' Hertf. postea & ante infra. tempus quo, &c. scz. in cras. Animar', anno regni dictæ dom' reg' nunc vicesimo quarto, coram Edmundo Anderson, Tho' Meade, Francisco Windham, & Will' Periam, tunc Justic' ipsius dom' reg' de banco, & aliis dict' dom' reg' fidelibus tunc ibi presentibus, inter quosdam Henr' vicecom' Byndon, Ric' Rogers Militem, Hen. Ashley Milit', Tho' Hayward, Geo' Trenchard, Johannem Strangwaies, Joh. Williams, Rich' Watkins, Tho' Mullens, Henr' Coker, Edward' S. Karke, Johan' Fitz James, & Georg' Gilbert armiger', tunc quer', & præd' Johan' Horsey Milit' tunc deforc', de dict' manerio de Over Melcum, al' Horsey Melcum, al' Sturges Melcum cum pertin', per nomina maneriorum de Clyfton, Malank, Torneford, Nether Crompton, Bradford, Sherborn, Wike, Horseys Melcum, alias Sturges Melcum cum pertin'. ac ducent' & quinquagint' messuagiorum, cent' toftor', decem molendinorum, decem columbar', trium mille acr' terr', duarum mille acr' prati, quinq; mille acr' pastur', mille acr' bosci, trium mille acr' jampn' & bruere, & decem librat' reddit' cum pertin' in Yetmister Rime intrinseca, Thornford, Bradford, Beere Hacket, Hirborne, Lillington, Nether Crompton, Over Crompton, Long

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## PART II.

Long Burton, Oburne, Heyden, Upmelcombe, Nether Melcombe, Chefelborne, Buckland, Plush, Mapowder, Mylton, alias Middleton & Helton, ac Rectoria de Bradford cum pertin', necnon Advocation' Ecclesiar' de Melcombe, Nether Melcombe, Clyfton, Malancke, Torneford, Nether Compton, & Bradford in com' Dorc'. Et manerior' de Horsey & Peignes cum pertin'. Ac 20. messuagiorum, sex tostr', duorum molendinorum, duor' columbar', mill' acr' ter', sexcent' acr' prati, mille & ducent' acr' pastur', quadragint' acr' bosci, mille acr' jampnor' & bruere, & quadragint' solidat' reddit' cum pertin' in Bridgwater, Chilton, Bough, Stafford, Berwicke, Weston, Bandrip, Peryson, Chedsey, Wembdon, & Cannington in com' Somers. unde pl'itum convent' sum fuit inter eos in eadem cur', scil' quod präd' Jo. Horsey recogn' präd' maneria, rectoriam, tenement', & reddit' cum pertin' ac advocation' präd' esse jus ipsius Vicecom', ut ill' quæ iidem Vicecomes, Rich' Rogers, Henricus Ashley, Thomas Howard, Georg. Trenchard, Joh' Strangwaies, Jo' Williams, Richardus Watkins, Thomæ Mullens, Henricus Coker, Edward' S. Karke, Johanni Fitz James, & Georg' Gilbert habuerunt de dono präd' Joh' Horsey. Et ill' remisit & quiet' claim' de se & hæred' suis präd' Vicecomit', Rich' Rogers, Henr' Ashley, Tho' Howard, Georgio Trenchard, Johanni Strangwaies, Johan' Williams, Richardo Watkins, Thomæ Mullins, Henrico Coker, Edwardo S. Karke, Joh' Fitz James, & Georgio Gilbert, & hæredibus ipsius Vicecom' imperpetuum. Et præterea idem Jo' Horsey concessit pro se & hæred' suis, quod ipsi warr' präd' Vicecom', Richardo Rogers, Henrico Ashley, Thom' Howard, Georgio Trenchard, Jo' Strangwaies, Joh' Williams, Rich' Watkins, Tho' Mullens, Henr' Coker, Edwardo S. Karke, Joh' Fitz James, & Georgio Gilbert, & hæred' ipsius Vicecom' präd' maneria, rectoriam, ten'ta, & reddit' cum pertin', ac Advocationem präd' contra omnes homines imperpetuum, cujus quidem finis tenor sequitur in hæc verba. Hæc est finalis concordia facta in curia dominæ reginæ apud castrum Hertf. in crastino Animarum, Anno reg' Eliz. dei gratia Angliæ, Franciæ, & Hiberniæ reginæ, fidei defensor', &c. a conquestu vicesim' quarto, coram Edmundo Anderfon milite, Thoma Meade, Francisco Windam, & Willihelmo Periam Justiciar', & aliis dominæ reginæ fidelibus tunc ibi presentibus, inter Henricum Vicecomit' Byndon, Richardum Rogers militem, Henricum Athley militem, Thomam Howard armig', Georgium Trenchard armig', Joh' Strangwaies armiger', Johannem Williams armiger', Richardo Watkins armig', Thomam Mullens armiger', Henricum Coker armig', Edwardum



Edwardum S. Karke arm', Jo' Fitz James arm', & Georg' Gilbert arm' quer', & Joh' Horsey militem deforc', de maneriis de Clyfton, Malancke, Torneford Nether Compton, Bradford, Sherborne, Wike, Horseys Melcum, alias Sturges Melcum cum pertinen' Ac de ducent' & quinquagint' messuagiis, cent' toftis, decem molendin', decem columbar', tribus mille acr' terr', duobus mille acr' prati quinque mille acr' jampn' & bruerie, & decem librat' reddit cum pertin' in Yetmister Rime intrensca, Thornford, Bradford, Beere Hacket, Shirborne, Lillington, Nether Compton, Over Compton, Long Burton, Oburne, Heyden, Upmelcombe, Nether Melcombe, Chafelborne, Buckland, Pluih, Mapowder, Mylton, alias Middleton & Helton, ac de Rectoria de Bradford cum pertin', necnon de Advocation' Ecclesiar' de Melcombe, Nether Melcombe, Clyfton, Malancke, Torneford, Nether Compton, & Bradford in com' Dorc'. Et de maner' de Horsey & Peignes cum pertin'. Ac de 20. messuagiis, sex toft', duobus molendinis, duobus columbar' mill' acr' terr', sexagint' acr' prati, mill' & ducent' acr' pastur', quadragint' acr' bosci, mille acr' jampnor' & bruerie, & quadragint' solidat' reddit' cum pertin' in Bridgwater, Chilton, Bough, Stafford, Berwick, Weston, Bandrip, Peryson, Chedsey, Wembdon, & Canningto' in com' Somersf. unde pl'itum convent' sum' fuit inter eos in eadem cur', scil' quod präd' Jo' Horsey recogn' präd' maneria, rectoriam, ten'ta, & reddit' cum pertin', ac advocation' präd' esse jus ipsius Vicec', ut ill' quæ iidem Vicecom', Richard', Henricus, Tho', Georg', Joh' Strangwaies, Jo' Williams, Richardus, Thomas, Henricus, Edwardus, Joh' Fitz James, & Georgius habeht de dono präd' Joh' Horsey. Et ill' remisit' & quiet' clam' de se & hæred' suis präd' Vicecomit', Richardo, Henr', Thom', Georgio, Johan' Strangwaies, Jo' Williams, Richardo, Thomæ, Henrico, Edwardo, Joh' Fitz James, & Georg' & hæred' ipsius Vicecom' imperpet'. Et præterea idem Joh' Horsey concessit pro se & hæred' suis, quod ipsi warr' präd' Vicecom', Rich', Henrico, Thom', Georg', Joh' Strangwaies, Johan' Williams, Rich', Thomæ, Henrico, Edwardo, Joh' Fitz James, & Georgio, & hæred' ipsius Vicecom' präd' maneria, rectoriam, ten'ta, & reddit' cum pertin', ac Advocationem, präd' contra omnes homines imperpetuum. Et pro hac recog', remiss' quiet' clam', warr', fine, & concord', iidem Vicecom', Richardus, Henric', Thomas, Georgius, Johannes Strangwaies, Johannes Williams, Richard', Thomas Henricus, Edwardus, Johannes Fitz James, & Georgius dederunt prædicto Johan' Horsey duo mille sexcent' & octogint' libr' sterling': qui quidem finis in forma prædict' levat', habit' & levat' fuit de prædict' maner' &

& tenement' voc' Over Melcum, al's Horseys Melcum, alias Sturges Melcombe cum pertin', ad usum præd' Jo' Horsey & hæred' masculor' de corpore ipsius Joh' Horsey legitim' procreat'. Et pro defectu tal' exit', ad usum Edythæ nunc uxoris præd' Rad' Horsey pro termino vitæ suæ. Et post decessum præd' Edythæ, ad usum præd' Rad' Horsey, & hæred' mascul' suorum de corpore suo legitime procreat'. Et pro defectu talis exit' ad usum Jasp' Horsey, fratris præd' Rad' Horsey & hæred' masculor' de corpore suo legit' procreat'. Et pro defectu talis exit', ad usum rectorum hæred' præd' Joh' Horsey imperpet': Virtute cujus, ac vigore præd' acti parliamenti de usibus in possession' transferend' edit' & provis. præd' Joh' Horsey fuit seisit' de præd' maner' & tenementis voc' Over Melcum, alias Horseys Melcum, alias Sturges Melcum, cum pertin' in dominic' suo ut de feodo talliato, viz. sibi & hæred' masc' de corpore suo legit' procreat', remanere inde præd' Edythæ pro termin' vitæ suæ, remanere inde præd' Rad' Horsey in feodo talliat', viz. sibi & hæred' masculis de corpore suo legit' procreat', remanere inde præd' Jasper' Horsey in feodo talliato, scilicet sibi & hæred' masculis de corpore suo legitim' procreat', remanere inde ulterius rectis hæred' præd' Jo' Horsey imperpetuum. Et iidem Jur' ulterius dicunt super sacrament' suum præd', quod postea & antea infra script' tempus quo, &c. scz. vicesim' die Jan', anno regni dictæ dom' reginæ nunc vicesim' nono, præd' Robertus Bingham jun' & Anna apud Melcum præd' habuer' exit' inter eos legit' procreat' Richardum Bingham, filium & hæred' apparen' dicti Roberti Bingham jun'. Et quod præd' Robert' Bingham & Anna de præd' maner', terr', & ten'tis voc' Wolcombe Bingham, sic ut præfertur seisit' existen', reman' inde in forma præd' spectan'. Et præd' Rob' Bingham sen' & Jana uxor ejus sic ut præfert' de præd' maner' de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. seisit' existen', reman' inde præf. Rob' Bingham jun', & hæred' de corpore suo super corpus præd' Annæ legit' procreat', remanere inde rectis hæred' dict' Roberti Bingham sen' spect', Idem Rob' Bingham jun' postea & ante infra scr' tempus quo, &c. scilicet undecimo die Novembris, ann' regni dictæ dom' reg' nunc tricesimo, apud Melcum præd' obiit de tali statu suo, de & in præmiss. ut præfert' seisit'. Et prædicta Anna ipsum supervixit, & se tenuit intus in præd' manerio & ten'tis voc' Wolcombe Bingham, & fuit inde sola seisit' in d'nico suo ut de liber' ten't' pro term' vitæ suæ per jus accrescendi: ac quod post mortem præd' Rob' Bingham jun', remanere præd' manerii de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. in feodo tall' descen-



descendebat præd' Ric' Bingham, ut filio & hæred' de corpore ipsius Rob' Bingham jun' super corpus præd' Annæ procreat', eodem Ric' Bingham tempore mortis præd' Rob' Bingham jun' patris sui infra ætatem existen', viz. ætatis unius anni & novem mensium & non ultra. Et quod præd' Anna de præd' manerio & tenementis voc' Wolcombe Bingham in forma præd' seisit' existen', ac præd' Rob' Bingham sen' & Jana de præd' manerio de Nether Melcum alias Melcum Bingham cum pertinentiis unde, &c. in forma præd' seisit' existen', remanere inde in forma præd' spectan', eadem Anna postea & ante infrascript' tempus quo, &c. sc. primo die Maii, anno regni dictæ dominæ reginæ nunc 32. apud Melcum præd' cepit in virum quendam Joh' Stroude armigerum. Et iidem Jur' ulterius dicunt super sacrum' suum præd', quod tempore mortis præd' Rob' Bingham jun', & ante infrascr' tempus quo, &c. præd' Joh' Horsey fuit seisit' de præd' manerio de Over Melcum, alias Horseys Melcum, alias Sturges Melcum cum pertinentiis in dominico suo ut de feod' calliato, viz. sibi & hæred' mascul' de corpore suo legitime procreat' remanere inde ulterius in forma præd' spectan': Prædictoq; Joh' Horsey sic inde seisit' existen', quidam Jo. Popham Miles, capital' Justic' dict' dom' reg' ad pl'ita coram ipsa regina tenend' assign' per nomen Jo' Popham armig' Georg. Trenchard armig' & Edw' Gorge armig' ante infrascr. tempus quo, &c. sc. 26. die Martii, anno regni dictæ dom' reg' nunc 31. extra cur' Cancell' ipsius dominæ reg' apud West' in com' Midd' tunc existen', prosequut' fuer' quodd' breve ipsius dom' reg' de ingress. super disseisin' en le post vers. præd' Joh' Horsey tunc tenen' liberi ten'ti præd' Manerii de Over Melcum, alias Sturges Melcum cum pertin' de eodem manerio, per nomina manerii de Horseys Melcum, alias Sturges Melcum cum pertin', Ac decem messuag. trescent' acr' terræ, ducent' acr' prati, quinque mille acr' past', trescent' acr' bosci, & trescent' acr' jampn' & bruere cum pertin' in Horseys Melcum, alias Sturges Melcum, tunc vic' præd' com' Dorset. direct', per quod quid' breve ead' dom' reg' nunc eidem tunc vic' Dorset. præcepit quod idem tunc vicecom' præciperet præf. Joh' Horsey, quod iuste & sine dilatione redderet præd' J. Popham, Geo' Trenchard, & Edward' Gorge, præd' manerium de Horseys Melcum, alias Sturges Melcum cum pertin', Ac præd' 10. messuag. trescent' acr' terræ, ducent' acr' prati, quinq; mille acr' pastur', trescent' acr' bosci, & trescent' acr' jampnor' & bruere cum pertin' in Horseys Melcum alias Sturges Melcum, quæ iidem Johan' Popham, Georg. Trenchard, & Edward' Gorge tunc clam' esse jus & hæred' suam, & in quæ idem Johan' Horsey non habet ingr' nisi post disseisin', quam H. Hunt inde injuste & sine judicio

judicio fecisset eidem Joh' Popham, Georg. Trenchard, & Edw' Gorge, infra triginta annos tunc ultim' elaps. ut dixerunt. Et unde querebantur quod præd' J. Horsey eis deforc' & nisi fecisset, Et iidem Joh' Popham, Georg. Trenchard, & Edw' Gorge fecissent ipsum tunc vic' secur' de clamor' suo prof. tunc idem vic' sum' per bonos summon' præd' J. Horsey, quod esset coram tunc Justic' dictæ dominæ reginæ de banco apud West' præd' a die Pasc. in quindecim die tunc proxim' sequen', ostensur' quare non fecisset, Et quod idem tunc vic' haberet ibi tunc sum' & breve illud. Ad quam quidem xv. Pasc' coram Edm' Anderson Milit' & sociis suis tunc Justic' ipsius dom' reg' de banco apud West' præd' ven' tam præd' J. Popham, Georg' Trenchard, & Ed' Gorge in propriis personis suis, quam præd' Joh' Horsey per Joh' Willys attornat' suum. Et R. Frampton armig' tunc Vicecom' præd' comit' Dorc' ad tunc ibi'm retorn' breve præd' sibi in forma præd' direct' in omnibus servit' & execut', viz. quod idem Jo' Popham, Georg' Trenchard, & Edw' Gorge, invenissent eidem tunc vic' pleg' de prof. breve ill', viz. Joh' Doo, & Ric' Roo. Et quod præd' J. Horsey sum' fuit per Joh' Den, & Ric' Fen. Et super hoc iidem Jo' Popham, Georg. Trenchard, & Edw' Gorge narrand' versus præd' Joh' Horsey super brevi prædicto in propriis personis suis, & petierunt versus ipsum Joh' Horsey maneria & tenementa præd' cum pertin' ut jus & hæreditatem suam, Et in quæ idem Joh' Horsey non habuit ingressum nisi post disseisinam quam Hugo Hunt inde injuste & sine judicio fec' præfato Joh' Popham, Georg. Trenchard, & Edw' Gorge, infra triginta annos tunc ultim' elaps. &c. Et unde tunc dixer' quod ipsimet fuerunt seisit' de manerio & tenementis ill' cum pertinentiis in dominico suo ut de feodo & jure, tempore pacis, tempore dominæ reginæ nunc capiend' inde explef. ad valentiam. &c. Et in quæ, &c. Et inde tunc produxer' sectam, &c. Et præd' J. Horsey tunc defend' jus suum quand', &c. Et vocat inde ad warr' David' Howel, qui tunc presens fuit in eadem cur' in propria persona sua, & gratis manerium & tenementa præd' cum pertin' tunc ei warr', &c. Et super hoc præd' Jo' Popham, G. Trenchard, & Edw' Gorge, tunc pet' vers. ipsum David' tenen' per warr' suam maneria & tenementa præd' cum pertinentiis in forma præd', &c. Et unde dixerunt quod ipsimet fuer' seisit' de maner' & tenementis præd' cum pertin' in dominico suo ut de feodo & jure, tempore pacis, tempore dom' reg' nunc capiend' inde explef. ad valenc', &c. Et in quæ, &c. Et inde tunc produxer' sectam, &c. Et præd' David' tunc tenens per warrant' suam defend' jus suum quando, &c. Et dixit quod præd' Hugo non disseisivit præd' Joh' Popham



## PART II. BINGHAM's Case.

Popham, Georg' Trenchard, & Edw' Gorge, de manerio & tenementis præd' cum pertinentiis, prout iidem Joh' Popham, Georg. Trenchard, & Edw. Gorge per breve & narrationem suam prædict' superius supposuer': Et de hoc pon' se super patriam, &c. Et præd' Joh' Popham, Georg. Trenchard, & Edw' Gorge tunc petierunt licentiam inde interloquend': Et habuerunt, &c. Et postea iidem Joh' Popham, Georg. Trenchard, & Edw. Gorge, reven' in eadem cur' eodem termino in propriis personis suis. Et præd' David licet solempnit' exact' non reven', sed in contempt' cur' tunc recessit, & default' fecit: Ideo tunc per eandem cur' concessum fuit, quod præd' Joh. Popham, Georg. Trenchard, & Edw. Gorge recuperent seisinam suam versus præfatum Jo. Horsey, de manerio & tenementis præd' cum pertinentiis, Et quod idem Joh. Horsey habuerit de terr' præd' David ad valenc', &c. Et idem David esset in mi'a, &c. Et super hoc præd' Jo. Popham, Georg. Trenchard, & Edward. Gorge tunc petier' breve dictæ dominæ reginæ Vic' Dorc. præd' dirigend' de He're fac' eis plenar' seisinam de manerio & tenementis præd' cum pertinentiis, & eis tunc concessum fuit, retornabil' ib'm a die Paschæ in quinque septimanas tunc proxim' sequen', &c. Ad quem diem coram præfato Edmundo Anderson Milit' & sociis suis tunc Justic' dictæ dominæ reginæ de banco, sc. apud West' præd' ven' præd' Joh. Popham, Georg. Trenchard, & Edw. Gorge in propriis personis suis. Et præf. Rob. Frampton armig' tunc Vicecom' præd' comit' Dorc. tunc mandavit, quod ipse virtute brevis illius sibi direct' 29. die Aprilis tunc ultim' præterit' he're fec' præf. Joh. Popham, Georg. Trenchard, & Edw. Gorge plenar' seisinam de maner' & tenementis præd' cum pertinentiis, prout per breve illud sibi præcept' fuit, cujus quidem recuperationis tenor sequitur in hæc verb' ff. Dorc. ff. Joh. Popham arm' Georg. Trenchard armig' & Edw. Gorge armig. in propriis personis suis per' versus Joh. Horsey Milit', manerium de Horseys Melcombe, alias Sturges Melcombe cum pertinentiis, Ac decem messuag' trescent' acr' terræ, ducent' acr' prati, quinque mille acr' pastur', trescent' acr' bosci, & trescent' acr' jampnor' & bruere cum pertinentiis in Horsey Melcum, alias Sturges Melcum, ut jus & hereditatem suam, Et in quæ idem Joh. Horsey non habuit ingressum nisi post disseisinam quam Hugo Hunt inde injuste & sine judicio fec' præfato Joh. Popham, Georg. & Edw. infra triginta annos jam ult' elapsi. &c. Et unde dic' quod ipsimet fuerunt seisir' de manerio & tenementis præd' cum pertinentiis in dominico suo ut de feodo & jure, tempore pacis, tempore dominæ reginæ nunc capiendo inde explef. ad valenciam, &c.

Et

Et in quæ, &c. Et inde produc' sextam, &c. Et præd' Jo. Horsey per Joh. Willys attornat' suum, venit & defend' jus suum quando, &c. Et vocat inde ad warrant David' Howel, qui presens est hic in cur' in propria persona sua, & gratis manerium & tenementa præd' cum pertin' ei warr', &c. Et super hoc præd' Jo. Popham, G. Trenchard, & Edw. Gorge, pet' vers' ipsum David' tenen' per warr' suam manerium & tenementa præd' cum pertin' in form' præd', &c. Et unde dicunt quod ipsimet fuer' seisis' de maner' & tenementis præd' cum pertin' in dominico suo ut de feodo & jure, tempore pacis, tempore dom' reg' nunc, capiend' inde explef. ad valent', &c. Et in quæ, &c. Et inde produc' sextam, &c. Et præd' David' tenen' per warr' suam, defend' jus suum quando, &c. Et dicit quod præd' Hugo non disseisivit præf. Joh. Popham, Georg. & Edw. de manerio & tenementis præd' cum pertin', prout iidem Joh. Georg. & Edw. per breve & narrationem sua præd' superi' suppon': Et de hoc pon' se super patriam, &c. Et præd' Joh. Popham, Georg. & Edw. pet' licenc' inde interloquend'. Et habent, &c. Et postea iidem Joh. Georg. & Edw. reven' hic in cur' isto eodem termino in propriis personis suis. Et præd' David' licet solempniter exact' non reven', sed in contempt' cur' recessit, & default' fec': Ideo conc' est quod præd' Jo. Popham, Georg. & Edw. recuperent sei'am suam vers' præf. Joh. Horsey de manerio & tenementis præd' cum pertin'. Et quod idem Johannes habeat de terr' præd' David' ad valenc', &c. Et idem David' in m'ia, &c. Et super hoc præd' Joh. Popham, Georg. & Edw. pet' breve dominæ reginæ Vicecom' præd' dirigend' de He're fac' eis plenar' seisinam de manerio & tenementis præd' cum pertinent', & eis conceditur, retornabil' hic a die Paschæ in quinq; septimanas, &c. Ad quem diem hic ven' præd' Joh. Popham, Georg. & Edw. in propriis personis suis. Et Vicecom', viz. Rob. Frampton armig' modo mand', quod ipse virtute brevis illius sibi directi 29. die Aprilis ultim' præterit' he're fec' præf. Joh. Popham, Georg. & Edw. plenar' seisinam de maner' & tenementis præd' cum pertinent', prout per breve illud sibi præcept' fuit, &c. Que quidem recuperatio in forma præd' habit', fuit habit' ad usum præd' Joh. Horsey & Dorotheæ tunc uxor' ejus, & hæred' masculor' de corpore ipsius Joh. Horsey legitim' procreat'. Et pro defectu talis exitus ad usum præd' Radulphi & Edythæ tunc uxoris ejus, & hæred' mascul' de corpore ipsius Radulphi legitim' procreat'. Et pro defectu talis exitus ad usum præd' Jasp. Horsey, & hæred' masculorum de corpore ipsius Jasperi legitime procreat'. Et pro defectu tal' exit' ad usum rector' hæred' præd' Jo. Horsey imperpetuum: Virtute cujus, ac vigore præd' act' Parl' de usub' in possessione



possession' transferend' edit', præd' Joh. Horsey & Dorothæa fuer' seisit' de manerio illo cum pertin', viz. idem Johannes Horsey in dominic' suo ut de feodo talliato, viz. sibi & hæred' masculis de corpore suo legit' procreat', ac præd' Dorothæa in dominico suo ut de libr' ten'to pro termino vitæ suæ, remanere inde in form' prædicta spectan'. Ipsiq; Joh. & Doroth. sic inde seisit' existen', remanere ind' in forma præd' spectan', idem Jo. Horsey postea & ante infra script' tempus quo, &c. scilicet septimo die Septembris, anno regni dictæ dom' reginæ nunc tricesimo primo supradicto apud Melcum præd' de tali statu suo inde obiit seisit' sine exit' masculo de corpore suo legit' procreat', & præd' Dorothæa ipsum supervixit, & se tenuit intus in manerio illo cum pertin', & fuit inde sola seisit' in dominico suo ut de libero ten'to pro termino vitæ suæ per jus accrescendi, remanere inde in forma præd' spectan'. Et quod Maria Arnold uxor Rich. Arnold armig', fuit una sororum & cohær' præd' Joh. Horsey, & Reginald' Moone miles fuit alter cohæred' præd' Joh. Horsey, viz. filius & hæres Will. Moone milit' & Eliz. uxoris ejus al' sororum ejusdem Jo. Horsey. Et iidem Jurat' ulterius dicunt super sacrum suum prædict', quod prædict' Dorothæa de præd' manerio de Over Melcum, alias Horseys Melcum, alias Sturges Melcum cum pertin' in form' prædict' seisit' existen', postea & ante infra script' tempus quo, &c. scz. primo die Septembris, anno regni dict' dom' reg' nunc tricesimo secundo, apud Melcum præd' obiit de tali statu suo inde seisit', post cujus mortem prædict' Rad. Horsey & Edytha in prædict' manerium de Over Melcum, alias Horseys Melcum, alias Sturges Melcum cum pertinentiis intraverunt, & fuer' inde seisit' prout lex postulat. Et iidem jur' ulter' dicunt super sacrum suum præd', quod præd' Robertus Bingham sen' & Jana de præd' manerio de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. sic ut præfertur pro termino vitar' suarum seisit' existen', remanere inde in forma præd' spectan', idem Rob. Bingham sen' postea & ante infra script' tempus quo, &c. scilicet undecimo die Januarii, anno reg' dict' dom' reginæ nunc tricesim' sexto apud Melcum præd' obiit de tali statu suo inde seisit', dicto Rich. Bingham existen' consanguineo & hæred' prædicti Roberti Bingham sen', viz. filii & hæred' præd' Roberti Bingham jun', filii & hæred' prædict' Roberti Bingham sen', & infra ætatem viginti & unius annorum, scz. ætatis octo annorum & non amplius; Et quod prædict' Richard. Bingham adhuc superstes & in plena vita existit, viz. apud Melcum prædict': Et quod prædict' Jana prædictum Robertum Bingham sen' supervixit & se tenuit intus in prædict' manerio,

de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. Et fuit inde sola seifit' in dominico suo ut de libero tenemento pro termin' vitæ suæ per jus accrescendi, remanere inde in forma præd' prout lex postulat. Et quod præd' Jana de præd' manerio de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. in d'nico suo ut de libero tenemento pro termino vitæ suæ in forma præd' seifit' existen', eadem Jana postea & ante infrafer' tempus quo, &c. scz' secundo die Aprilis, anno regni dictæ dom' reg' nunc' quadragesimo prim' apud Melcum præd' obiit de tali statu suo inde seifit', post cujus mortem & ante infrafer' tempus quo, &c. prædict' Ra. Horsey, Rich. Veale, & Edw. Gore in tenementa infrafer' cum pertinentiis intraver'. Et quod postea & ante infrafer' tempus quo, &c. præd' Joh. Stroude & Anna uxor ejus, & Rich. Bingham in prædict' manerium de Nether Melcum, alias Melcum Bingham cum pertinentiis unde, &c. intraver', ut in jure prædict' Rich. Bingham : virtute cujus præd' Richard. Bingham fuit de & in præd' manerio cum pertinentiis unde, &c. seifit' Et sic inde seifit' existen', postea & ante infrafer' tempus quo, &c. scz' septimo die Aprilis, anno regni dictæ domin' reg' nunc' quadrages. primo supradict' prædict' Joh. Stroude & Anna uxor ejus, & Richard. Bingham, supra tenta infrafer', per quoddam script' suum sigill' suis sigillat', gerens dat' secundo die April' anno reg' dict' dom' reg' nunc' quadragesimo primo supradicto Jurator'q; prædictis in evidentiis ostens. apud Melcum prædictam dimiserunt prædictum maner' de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. infranominat' Willihel. Albert : Habend' & tenend' sibi & assign' suis a festo Annunciationis beat' Mariæ virg' tunc ultimo præterito ante datum ejusd' scripti, pro termino 7. annorum extunc prox' & immediat' sequent' plenar' complendor' & finiend' : Reddendo inde annuat' durant' termin' præd' centum & quadragint' libr' per annum, ad festum S. Michaelis Archangeli, & Annunciation' beat' Mariæ virginis per equales portiones solvend'. Virtute cujus dimiss. præd' Will. Albert eodem septimo die Aprilis, anno quadragesimo primo supradict', in præd' manerium de Nether Melcum, alias Melcum Bingham cum pertin' unde, &c. intravit, & fuit inde possessionat' prout lex postulat. Et sic inde possess. existen', postea & ante infrafer' tempus quo, &c. sc. præd' septimo die Aprilis ann' quadrages. primo supradict' præd' Willihel. Albert super tenementa infrafer' intravit, & dimisit tenementa infrafer' cum pertinentiis in quibus, &c. prædict' Georgio Stroude prout in narratione infrafer' interius specific' : Virtute cujus prædict' Georgius Stroude prædict' septimo die Aprilis, anno quadragesimo primo



primo supradict' in ten'ta infrafer' in narrac' infrafer' mentio-  
 nat' in quibus, intravit, & fuit inde possessionat' prout lex  
 postulat, quousq; præd' Rad. Horsey, Ric. Veale, & Edw.  
 Gorge infrafer'. 11. die April' anno quadrages. primo supra-  
 dict' super possessionem ipsius Georg. Stroude inde intrave-  
 runt, & ipsum G. a possessione sua inde termino suo præd'  
 nondum finit' ejecer', expuler', & amover': Sed utrum super  
 tota materia præd' per Juratos præd' in forma præd' com-  
 perta, intratio præd' G. in ten'ta infrafer' cum pertin' sit  
 licita necne, iidem Jur' pœnitus ignorant, Et petunt inde  
 advisament' curiæ hic, &c. Et si super tota materia præd'  
 per Jur' præd' in forma præd' comperta, videbitur cur' hic,  
 &c. quod intratio præd' G. Stroude in ten'ta infrafer' cum  
 pertin' sit licita, tunc iidem Jurat' dicunt super sacram'  
 suum præd', quod præd' Ra. Horsey, Ric. Veale, & Edw.  
 Gorge sunt culpabiles de transgress. & ejectione infrafer',  
 prout præd' Georg. Stroude interius vers. eos queritur, Et  
 tunc affid' dampn' ipsius G. Stroude occasione transgress. &  
 ejectionis infrafer' ultra mis. & custag' sua per ipsum circa  
 sectam suam in hac parte apposit' ad duos solidos, & pro-  
 mis. & custag' ill' ad xx.s. Et si super tota materia præd'  
 per Jurat' præd' in forma præd' comperta, videbiter cur' hic,  
 &c. quod intratio præd' G. Stroude in ten'ta infrafer' cum  
 pertin' non sit licita, tunc iidem Jurat' dicunt super sacrum  
 suum præd' quod præd' Ra. Horsey, Ric. Veale, & Edward.  
 Gore non sunt culpab' de transgress. & ejectione infrafer'  
 prout præd' Ra. Horsey, Ric. Veale, & Edw. Gorge interius  
 allegaverunt: Et quia cur' dictæ domine reginæ hic de judi-  
 cio suo de & super præmiss. reddendo nondum advisatur,  
 dies inde dat' est partibus præd' coram domina regina apud  
 Westm' usq; diem Veneris prox' post crastinum S. Trin' de  
 judicio suo inde audiendo, eo quod curia dictæ dom' reg' hic  
 inde nondum, &c. Ad quem diem coram dom' reg' apud  
 Westm' ven' partes præd' per Attornatos suos præd', Et quia  
 curia dom' reg' hic de judicio suo de & super præmiss. red-  
 dend' nondum advisatur, dies inde dat' est partibus præd'  
 coram domina regina apud Westmonast' usque diem Jovis  
 prox' post Oëtab' S. Mich' de judicio suo inde audiendo, eo  
 quod curia dict' dom' reginæ hic inde nondum, &c. Ad  
 quem diem coram dom' reg' apud Westm' venerunt partes  
 præd' per attorn' suos præd', Et quia curia dom' reg' de  
 judicio suo de & super præmiss. reddendo nondum advisatur,  
 dies inde dat' est partibus prædict' coram dom' reg' apud West'

usque diem Veneris prox' post octab' Sanctæ Hillarii de iudicio suo inde audiendo, eo quod cur' dict' domine regine hic inde nondum, &c. Ad quem diem coram dom' reg' apud West' venerunt partes præd' per attornat' suos præd'. Et quia curia dictæ dom' reg' hic de iudicio suo de & super præmiss. reddend' nondum advisat', dies inde dat' est partibus præd' coram dom' regina apud Westm' usq; diem Mercurii prox' post xv. Pasch' de iudicio suo inde audiendo, eo quod curia dictæ dom' reg' hic inde nond', &c. Ad quem diem coram dom' reg' apud West' vener' partes præd' per attorn' suos præd'. Et quia curia dom' reg' hic de iudicio suo de & super præmiss. reddendo nondum advisatur, dies inde dat' est partibus præd' coram dom' reg' apud West' usq; diem Vener' prox' post crastin' S. Trin' de iudicio suo inde audiendo, eo quod cur' dictæ dom' reg' hic inde nondum, &c. Ad quem diem coram dom' reg' apud West' vener' part' præd' per attornat' suos præd' : Super quo vis. & per curiam dom' reg' nunc hic plenius intellectu' omnibus & singul' præmis. maturaq; deliberatione super inde habita. Conc' est quod præd' G. Stroude recuperet vers. præd' Ra. Horsey, Ric. Veale, & Edw. Gorge, terminum suum præd' de & in ten'tis præd', de & in narrac præd' spec' cum pertin' adhuc ventur', & dampna sua prædict' per Jur' prædict' in forma prædict' assess. Nec non duodecim libr' pro mis. & custag' suis præd' eidem G. Stroude, per curiam dictæ dom' reg' hic ex assensu suo de incr'o adjudicat'. Quæ quidem dampna in toto se attingunt ad 13. lib. & 2. s. Et præd' Ra. Horsey, Ric. Veale, & Edw. Gorge capiantur, &c.



Trin. 43 Eliz. Which  
began Mich. 41 & 42 Eliz.  
Rot. 144.

*BINGHAM's Case adjudg'd in the King's Bench.*

IN an *Ejectione firme*, between George Stroude, Esquire, Plaintiff, upon a Demise made by William Albert against Sir Raphe Horsey, Knight, and others Defendants, upon the general Issue, a Special Verdict was found to this Effect; Robert Bingham the Grandfather, Robert Bingham the Father, Richard Bingham the Son, within Age. Robert Bingham the Grandfather, held the Mannor of Bingham's Melcum, of Sir John Horsey, Knight, as of his Mannor of Horseys Melcum, by Knight's Service. And Anno 12<sup>th</sup> Eliz. levied a Fine of the said Mannor of Bingham's Melcum, to the Use of himself, and Jane his Wife, and of the Heirs of the said Rob. the Grandfather: 20<sup>th</sup> Eliz. the said Robert the Grandfather levied another Fine of the said Mannor of Bingham's Melcum, to the Use of himself for Life, and after to the Use of Robert the Father (being his Son and Heir apparent) in Tail, and for Default of such Issue, to the Use of the right Heirs of the Grandfather: Robert the Father, 30<sup>th</sup> Eliz. died, Richard his Son and Heir then, and yet within Age, by which the Remainder in Tail descended to him. 31<sup>st</sup> Eliz. Sir John Horsey suffered a common Recovery of his Mannor of Horseys Melcum, to the Use of himself and Dorothy his Wife, in Tail, and after to the Use of the Defend. Sir Raphe Horsey, and Edyth his Wife, in Tail, and after to the Use of the right Heirs of Sir John. 32<sup>nd</sup> El. Sir John, and Dorothy his Wife dying without Issue, Sir Raphe, the Defend. entred into the Man. of Horseys

Jenk. Cas. 169  
Moor 602.

# BINGHAM's Case. PART II.

*Horsey Melcum*; 36 Eliz. Robert Bingham the Grandfather died, by which the Reversion in Fee descended to Richard the Son; 41 Eliz. Jane, Wife of Robert Bingham the Father died, Richard Bingham, within Age, entered into the said Mannor of *Binghams Melcum*, and made a Lease of Part of the Demeans thereof to Albert, by Deed indented for Seven Years, yielding 40 l. Rent per Annum, who demised to the said George Stroude, who entered, upon whom Sir Raphe, and the other Defendants, entered, against whom the Plaintiff brought the *Ejectione firma* for Part of the Demeans of the said Mannor of *Binghams Melcum*: And upon great Deliberation and Conference had with divers other Justices, Judgment was given for the Plaintiff. And in this Case four Points were resolved.

First, When Robert Bingham the Grandfather, 20 Eliz. levied a Fine to the Use of himself and Jane his Wife, for Life, and after to the Use of Robert the Father, in Tail, and after to the Use of the right Heirs of the Grandfather, the Grandfather had a Fee Expectant upon the Estate Tail,

as a (a) Reversion, and not as a Remainder. And there- with agree 32 H. 8. Br. Garde 93. (b) 4 H. 6. Br. tit. Done & Remainder 15. 28 H. 8. Dyer 7. (c) Bucknam's Case. And so it was adjudged, Trin. 31 Eliz. in the King's-Bench, between Fenwick and Mytford, where the Case was, That Anthony Mytford, seized of Land in Fee, levied a Fine there- of to the Use of Margaret Mytford for Life, and after to the Use of Jasper Mytford, in Tail, and after to the Use of the Right Heirs of the said Anthony; and afterwards Te- nant in Tail died without Issue. Anthony, in the Life of Margaret, made a Lease to one Robert Holman for a 1000 Years, and died, and if this Lease were good or not against his Heir, was the Question. And it was adjudged, That the Lease was good, for Anthony had it as a Reversion. And so it was resolved in the like Case by all the Judges of England, in the Case of the Earl of (d) Bedford in the Court of Wards.

Secondly, It was resolved, That Sir Raphe Horsey should not have the Wardship of the Land, because a Reversion in Fee is expectant upon it, and the Reversion is immediately held of the Lord, and not the Estate Tail: But it was ob- jected, That in this Case, by the Death of Robert the Grand- father, the Reversion in Fee descended to Richard, who is also the Heir of the Donee in Tail, and the Land is held by Knight's Service, and ought to be in Ward to some, or otherwise many Lords may be defeated of the Wardship of Lands held of them: and Richard cannot hold the Estate Tail.

(a) 3 Leon. 25.  
34. B. N. C. 186.  
Moor 608.  
(b) 4 H. 6. 21.  
22, &c. Br. Te-  
nure 21.  
(c) Bocken-  
ham's Case. Co.  
Lit. 13. a. 22. b.  
1 Leon 182.  
3 Leon. 25, 54.  
3 Anderl. 2, 288.  
289. Hob. 27.  
280. N. Benl. 16.  
17. Cr. El. 321.  
Moor 284, 285.  
310. 2 Rol. Rep.  
105. Raym. 329.  
1 Mod. Rep. 98.  
237, 238. 3 Keb.  
122, 177, 178.  
179, 240, 241.  
317, 339. 1 Vent.  
373, 375, 377.  
Jenk. Cen. 267.  
(d) 1 Co. 130. a.  
Poph. 3, 82.  
Moor 371, 718,  
719. Jenk. Cen.  
248. 2 And. 197.  
2 Rol. 418, 791.  
Raym. 83.



Tail of himself, and therefore Sir *Raphe Henfey* in this Case, shall have the Wardship of the Land. As, if Tenant by Knight's Service make a Gift in Tail, and afterwards releases to the Donee and his Heirs, now the Donee hath the Estate Tail, and the Reversion expectant; in that Case, if the Donee dies, his Issue within Age, the Lord shall have the Wardship of the Body and of the Land: And in Proof thereof, the Book in 38 E. 3. 7. b. was cited, where in a Writ of Ward of the Land and of the Heir of R. C. the Defendant pleaded, That R. C. levied a Fine to the Defendant, *come ceo, &c.* who granted and rendred the Land to him in Tail, saving the Reversion to the Defendant, and so R. C. the Donee, held of him: To which the Plaintiff replied, That the Defendant released to R. C. all his Right, and so R. C. became his Tenant: To which the Defendant, by way of Rejoinder, said, That he did not release, and tendered Issue: And it was held no good Issue, wherefore he said he did not release, but continued his Estate all Times in Tail, by Force of the Fine, and thereupon Issue was taken; and upon that it was inferred, That forasmuch as the Writ of Ward was brought as well for the Land as for the Heir, that the Replication would not be good, unless the Lord should have the Wardship of the Land in the same Case: But the Court, upon Consideration of the said Book, gave no great Regard to it, as well because the said Point, as to the Wardship of the Land, was not moved in the Case, as because it appeared by the joining of the Issue, that it was pretended that by the Release the Estate Tail was extinct; for the Issue is, Whether he continued his Estate Tail by Force of the Fine, and that without Question he did, although the Release were made. Note Reader, If the said Book were agreed to be Law, yet it is not to be likened to the Case at Bar, for when the Donor doth release to the Donee in Tail, the same doth enure by increasing of his Estate. And therefore if the Law should be, That the Lord in the same Case should have the Wardship of the Heir and Land of the Donee, for as much as the Heir claims both the Estates by Descent from one and the same Ancestor: Yet in the Case at the Bar, when the Donee hath an Estate Tail by Descent from his Father, and the Reversion as Heir to his Grandfather; and so two distinct Estates descend to him from two several Ancestors, the Land shall not be in Ward to the Lord, for the Father held the Estate in Tail of the Grandfather, and the Grandfather his Reversion of the Lord. But it was held by the whole Court, That if Tenant in Tail be with the Reversion expectant to him and his Heirs, of Lands held by Kts Service of a common Person, and afterwards he dies, his Heir within Age, he shall be in Ward for his Body, but the Lord shall not have the Wardship of the Land, for the Reversion is held immed. of him, and not the Estate Tail. And if he grants over the Reversion he shall hold the Est. T. of his Grant. and altho' the

Co. Lit. 78. a.

Co. 116. b.  
Plow. Com.  
296. b.

Seigniorie of the Estate Tail is suspended, yet the Donee hath two distinct Estates in him, that is to say, the Estate Tail, and the Reversion in Fee; and the Reversion is as a Mesnalty betwixt the Lord and the Donee, and it cannot be said, that in this and other the like Cases, the Lord may be defeated of the Wardship of the Land, forasmuch as the Law doth not give in such Cases any Wardship of the Land to the Lord, and the Law doth Wrong to no Man. But if it were admitted, that the Tenure between the Donee and him in the Reversion, by the Unity were determined, yet nothing shall be held of the Lord but the Reversion, and in some Case, the Donee in Tail shall hold of no Body; for where the Tenant of the Archbishop of Canterbury made a Gift in Tail, the Remainder to the King in Fee, the Donee (a) held of no Body, as it was held 4 & 5 Phil. & Mar. Dyer 154.

(a) Dyer 154.  
pl. 18. Co. Lit.  
152. b. Goldsb.  
149. 2 Rol. 514.

Thirdly, it was resolved, That if the Case were admitted that Rob. the Grandfather was Tenant for Life, the Remaind. to Rob. the Fath. in Tail, the Remaind. to Rob. the Father in Fee, and Rob. the Fath. had Issue Rich. within Age, and died, and afterward Sir John Horsey the Lord, conveyed the Seigniorie to Sir Raphe, the Defend. and afterwards Rob. the Grandf. died,

(b) 9 Co. 129. b.

that Sir Raphe the Defend. shall not have the (b) Wardship of Richard, because Robert the Father held not of him (nor of

(c) 10 Co. 84. b.

any of his Ancestors, whose Heir he is) the Day of his (c) Death, nor was the Land within the Fee or Seigniorie of Sir Raphe, or any of his Ancestors, whose Heir he is, at the Time of the Death of the said Robert the Son; and a Man shall never have the Wardship of the Heir, when the Land was not in his Fee or Seigniorie, or of some of his Ancestors, at the Time of the Death of the Tenant, and that is well proved by the Words of the Writ of Ward, that is to say, *Præcipe quod reddat custodiam terre & heredis C. quæ ad ipsum pertinet, eo quod C. terram illam de eo tenuit die quæ obiit.* And of such Effect are the Words of the Writs of (d) *Diem clausit extremum*, and *Mandamus*. And altho' (e) during the Life of the Tenant for Life, the Heir of him in Remainder shall not be in Ward, because the Tenant for Life is Tenant to the Lord Paramount, and the Lord shall not have the Wardship so long as he hath a Tenant for Life; yet the Death of the Tenant for Life is not the Cause of the Wardship, but is a Removal of the Impediment for which for the Time he was not in Ward: As it was held *Pasch. 39 Eliz.* in the Com. Pleas, in a Writ of Waste betwixt (f) *Paget and Cary*, That if there be Tenant for Life, the Remaind. for Life, the Remaind. in Fee, and the Tenant for Life commits Waste, and he in Remaind. for Life dies, now he in the Remaind. in Fee, shall have a Writ of Waste, for the mean Estate for Life which was the Impediment, is now removed. Also it was said, when to the

(d) F. N. B.  
251. k.  
(e) F. N. B.  
142. b.

(f) 5 Co. 76. b.  
10 Co. 44. b. 11  
Co. 81. b. Moor  
18. 1 Jones 51.  
F. N. B. 58. c.  
59. h. Cr. Jac.  
688. 50 E. 3 4. 2.  
2 Rol. 829.  
2 Inst. 301. Lit.  
Rep. 256. Co.  
Lit. 54. 2.



the Perfection or Consummation of a Thing (a) two Accidents are requisite, and one happens in the Time of one, and the other in the Time of another, in such Case, neither the one nor the other shall take Benefit of it, because both do not happen in the Time of any them, and both are requisite to the Consummation of the Thing. As if Lord and Tenant be by certain Rent, and the Tenant (b) ceases for a Year, and then the Lord grants over his Seignior, and then the Tenant ceases for another Year, in this Case none of them shall take Benefit of this Cesser, *quod fuit concessum*.

And a Case was adjudged in this Court, *Trinit. 25 Eliz.* in (c) *Lacy's Case*, That whereas *Lacy* struck *Peacock*, and gave him a mortal Wound upon the Sea, of which *Peacock* died at *Scarborough* in the County of *York*, and *Lacy* was discharged of it, for those of the County of *York* could not enquire of his Death, without Enquiry of the Stroke, and of the Blow they could not enquire, because it was not given within any County; and those of the Admiral Jurisdiction, could not as of a Felony, enquire of the Stroke, without Enquiry of the Death, and they could not enquire of the Death, because it was *infra corpus comitatus*: And it was said, when divers Accidents are requisite to the Consummation of a Thing, the Law in many Cases will rather respect the (d) original Cause than any other. As 6 E. 3. 41. if a Man (e) present to the Church of another in the Time of War, and thereupon the Presentee is instituted and inducted in the Time of Peace, the Law gives such Regard to the original Act, that is to say, the Presentment, that all that follows thereupon, although it were in Time of Peace, shall be avoided, And now, upon the whole Matter, this Usurpation shall be construed to be in Time of War, and shall not put the right Patron out of Possession. And so, and upon the same Reason was (f) *Shelly's Case* adjudged in this Court. And it appears also by the Case of Dower, in 4 H. 8. and cited in 5 Eliz. *Dyer* 224. if the Husband levies a Fine with Proclamations, and dies, and five Years pass after his Death, the (g) Wife is barred of her Dower, against the Opinion in *Plow. Com.* 373. for although to the Consummation of Dower three Things are requisite, that is to say, Marriage, Seisin, and the Death of the Husband; and although at the Time of the Fine levied, her Title was not consummate, yet the Law respects the first and original Causes, *scil.* Marriage and Seisin. So in the Case at Bar, it may be said, That the Law shall rather respect the Death of him in the Remainder, and the Descent from him to one within Age, which is the original Cause of the Wardship, than the Death of the Tenant for Life, which is but *causa sine qua non*, and rather a Removal of the Impediment, as hath been said, than a Cause. But it was resolved, as it hath been

(a) 3 Bulstr. 253.

(b) 3 Bulstr. 253. Palm. 417.

(c) 1 Leon. 270.  
13 Co. 53.  
3 Inst. 48, 113.  
Moor 121, 122.  
5 Co. 107. 1 Rol.  
Rep. 139.  
1 Bulstr. 203.  
Dalt. Just. 340.  
2 Brownl. 34.(d) 1 Co. 106b.  
99. b. 3 Bulstr.  
257. 1 Jones  
428. Cr. Jac.(e) 1 Jones 428.  
1 Co. 99. b.  
2 Rol. 351. 1 Mod.  
Rep. 230. 6 E. 3.  
41. b. F. N. B.  
31. J. Darreign  
Presentment 4.  
7 E. 3. Darreign  
Presentment 2.  
18 E. 2. Quare  
Impedit 175.  
Co. Lit. 249. b.  
344. b. 6 Co.  
30. a.(f) 1 Co. 99. b.  
106. b.  
(g) *Dyer* 72.  
pl. 3. 224. pl. 28.  
Moor 53. 10 Co.  
49. b. 2 Rol.  
Rep. 409.  
Goldsb. 148.  
Co. Lit. 326. a.  
3 Leon. 221.  
3 Inst. 216. 8 Co.  
72. b. 1 Rol.  
Rep. 160.  
(h) Co. Lit.  
31. a. 32. a.  
Plowd. 373. a.

been said, That neither the one nor the other, for the Cause aforesaid, in this Case shall have the Wardship.

2 Rol. Rep. 13.

And it was said, If there be Tenant for Life, the Remainder in Fee of a Seignory, and Tenant for Life, the Remainder in Fee of the Tenancy held by Knight's Service, if he in Remainder of the Tenancy dies, his Heir within Age, and afterwards Tenant for Life of the Seignory dies, he in Remainder in Fee of the Seignory, shall have the Wardship, because the Land at the Time of the Death of the Tenant in Remainder, was in his Fee and Seignory: So, and for the same Reason, if there be Tenant for Life, the Remainder in Fee of Lands held *in supra*, and the Lord grants his Seignory for Life, and afterwards he in Remainder in Fee dies, his Heir within Age, and afterwards the Grantee for Life of the Seignory dies, and then the Tenant for Life dies, he in Reversion of the Seignory shall have the Wardship: So if he in Remainder dies, his Heir within Age, *in supra*, and afterwards the Lord dies, and then the Tenant for Life dies, the Heir of the Lord in this Case shall have the Wardship; for an Act in Law shall not prejudice any one; and his Executor cannot have it, for it was not a Chattel vested in the Testator. And of such Opinion as to this third Point in the principal Case, were Sir *Edw. Anderson*, and *Walmesley*, Justices of the Com. Pleas, upon Conference with them, as the Lord *C. J. Popham* reported.

Fourthly, It was resolv'd, That Sir *Ralph*, the Defendant, should not have two Parts of the Lands by the Statutes of 32 & 34 H. 8. For altho' *Robert* the Grandfather had limited the Use to *Rob.* the Father, which is within the said Statutes, yet when *Rob.* the Father died, in the Life of the Grandfather, now the said Statutes do not extend further, for the Heir of the Father who is in by Descent, shall be in Ward by the Com. Law, and not by the said Statutes. And if the Statute shall extend to the Son and Heir of him in Remainder. *pari ratione*, it shall extend to all the Heirs of him in Remainder. *in infinitum*. As if a com. Person be Lord, and there be Tenant by Knight's Service, and the Tenant makes a Gift in Tail to his younger Son, and dies, and the Reversion descends to the elder, in this Case, *hac vice*, the L. shall have the Wardsh. of two Parts of the Land of the Donee: But if the Donee dies, now the elder Son, having the Revers. shall have the Ward. of the Heir of the Donee, and the Statutes do not extend but only to the Child first advanced, if he survives the Father, and be then Owner of the Land. For if the Father conveys the Land to the Use of any of his Sons, and the Son so advanced, aliens or makes any Estate of the Land *bona fide*, in the Life of the Father, now the King, or the Lord of whom the Land is held, shall not have the Wardship by Force of the said Statutes; for the Statutes are expounded to give two Parts to the King or the Lord, when the Advancement

Co. Lit. 78. 2.  
9 Co. 112. 2.

Co. Lit. 78. 2.  
8 Co. 165. 29  
9 Co. 132. 20



Advancement continues in the Person advanced, without Alteration either by Act in Law, as by Descent, or by Act of the Party, as by Conveyance.

The same Law when Land is conveyed for the (a) Advancement of the Tenant's Wife, or for Payment of his Debts, if after the Land be aliened *bona fide* before the Death of the Tenant, the King nor other Lord shall have any Wardship. And so was the Statute of (b) *Marlebridge, Cap. 6. de hiis autem qui primogeniti, &c. feoffare solent, &c.* expounded: For if (c) the Father had enfeoffed his Son, yet if the Son in his Father's Life had aliened *bona fide*, it was out of the Remedy of that Statute, and in such Case the Lord shall not have the Wardship, as appears by 33 H. 6. 16. in *Andrew Woodcock's Case*. So in the same Case, if the Son had died in the Life of his Father: But otherwise it is, if the Conveyance made by the Son be made after the Death of the Tenant, for then the Lord had once cause of Wardship, and therefore the Alienation after that, shall not toll his Benefit.

Also for another Reason, Sir Ralph cannot take Benefit of the Conveyance to the Use of the Son, because Robert the Father hath conveyed the Land to the Use of his Wife for Life, who survived him, and so the Statute once satisfied. *Vid. 14 Eliz. Dyer (d) 308. Accord.* And so it was resolved in the Case of (e) *Northcote, Pasch. 32 Eliz.* in the Court of Wards, That if the King by Force of the said Statute, be entituled to have two Parts of the Land conveyed to one Son in Tail after his Death without Issue, he shall not have the Benefit of the Statute again against any other Son in Remainder: And so the Doubt in (f) *Shaw's Case, 2 & 3 Phil. & Mar. Dyer (g) 130.* is adjudged and resolved. The Attorney General, John Doderidge, John Strode, and others, were of Council with the Plaintiff: And Laurence Tanfield, Laurence Hyde, and others, with the Defendant.

Casuum

## Casuum istius Libri series.

1	Paynter versus Manser, Dette.	<i>Pasc.</i> 26 <i>El.</i> <i>Rot.</i> 1608. fol. 3	
2	Goddard versus Denton, Dette.	<i>Hill.</i> 26 <i>Eliz.</i> <i>Rot.</i> .103S.	4
3	Througgood versus Cole, Trespas	<i>Trin.</i> 26 <i>Eliz.</i> <i>Rot.</i> 928.	9
4	Wiseman versus Barnard, Dette.	<i>Trin.</i> 27 <i>Eliz.</i> <i>Ros.</i> 1354	15
5	Smith & Lane.	<i>Mich.</i> 28 & 29 <i>Eliz.</i>	16
6	Baldwin & Moreton, Trespafs.	<i>Pasc.</i> 31 <i>Eliz.</i>	23
7	Smith & Miles, Action sur Trover.	<i>Trin.</i> 31 <i>Eliz.</i>	25
8	Heyward & Bettisworth, Repl'	<i>Pasc.</i> 22 <i>Eliz.</i> <i>Rot.</i> 738.	31
9	Hall versus Peart, Doddington's Cafe.	<i>Mich.</i> 36 & 37 <i>Eliz.</i>	32
10	Sir Rowland Heyward's Cafe.	<i>Pasc.</i> 37 <i>Eliz.</i>	35
11	The Bishop of Winton', Wright versus Wright, Prohibition.	<i>Pasc.</i> 38 <i>Eliz.</i>	43
12	The Bishop of Cant. Greene & Balser.	<i>Trin.</i> 38 <i>Eliz.</i>	46
13	Sir Hugh Cholmley in the Exchequer	<i>Pasc.</i> 39 <i>Eliz.</i>	50
14	Buckley & Harvey.	<i>Mich.</i> 39 & 40 <i>Eliz.</i>	55
15	Colgate & Blithe, Beckwith's Cafe.	<i>Trin.</i> 27 <i>Eliz.</i> <i>Rot.</i> 750.	56
16	Pilkington & Winnington.	<i>Mich.</i> 40 & 41 <i>Eliz.</i>	59
17	Gyles & Wescot's Cafe.	<i>Hill.</i> 41 <i>Eliz.</i>	60
18	Will' Rud versus Edward Tooker.	<i>Hill.</i> 43 <i>Eliz.</i> <i>Rot.</i> 136.	66
19	The Lord Cromwel's Cafe.	<i>Hill.</i> 43 <i>Eliz.</i>	69
20	Bingham's Cafe.	<i>Trin.</i> 43 <i>Eliz.</i>	91

F I N I S.